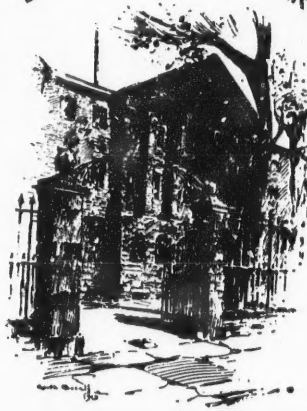


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McKINNON vs. McNEILL.

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WRIT OF SUMMONS.

CAPE BRETON, SS.

[L. S.] VICTORIA, *by the Grace of GOD of the United Kingdom of Great Britain and Ireland,
QUEEN, Defender of the Faith, and of the Church of England, on Earth the
Supreme Head.*

TO THE SHERIFF OF THE COUNTY OF CAPE BRETON, OR TO ANY OTHER OF OUR SHERIFFS:

We command you to summon John McNeil (Hill), Hector McNeil (Donald's son), Roderick McNeil (Allan's son), all of Grand Narrows; Michael McNeil (Tailor's son), Alexander McKinnon (wagon-wright), Hugh McNeil (farmer's son), Murdock McKenzie (ban), all of Christmas Island; and Hector McKenzie (ban), of rear of Christmas Island, and all of Cape Breton County, yeomen, to appear in the Supreme Court at Sydney, within ten days after the service of this writ, upon them respectively at the suit of John McKinnon, who says that the defendants seized and took the plaintiff's goods, that is to say: sixty wharf logs and one hundred and sixty logs: 10

That the defendants seized and took a platform stage and wharf of the plaintiff at Christmas Island, in said County, and cast the same adrift, and deprived plaintiff of the use thereof:

That the plaintiff built a platform stage and wharf, and the defendants destroyed the same:

That the plaintiff constructed a platform stage and wharf, and the defendants broke up and destroyed the same, and deprived the plaintiff of the use and possession of the said platform stage and wharf, and of the timber and logs and other materials of which the same was constructed:

That the plaintiff intended building a ship or vessel at Christmas Island, and erected a platform stage and wharf there of logs and timber, on which the same was to be constructed, and made all necessary preparations for proceeding with his work of ship-building, and the defendants cast adrift or broke up, destroyed or injured the plaintiff's platform stage and wharf, and deprived the plaintiff of the use thereof, whereby he was delayed and prevented from building his ship, and hindered from prosecuting his work in connection therewith, and by reason thereof has sustained damages. 20

That the defendants on divers days and times broke and entered certain land of the plaintiff, covered with water, situate on the point adjoining the Glebe Lands, near Christmas Island, and destroyed and deprived the plaintiff of the use of a platform stage and wharf erected thereon:

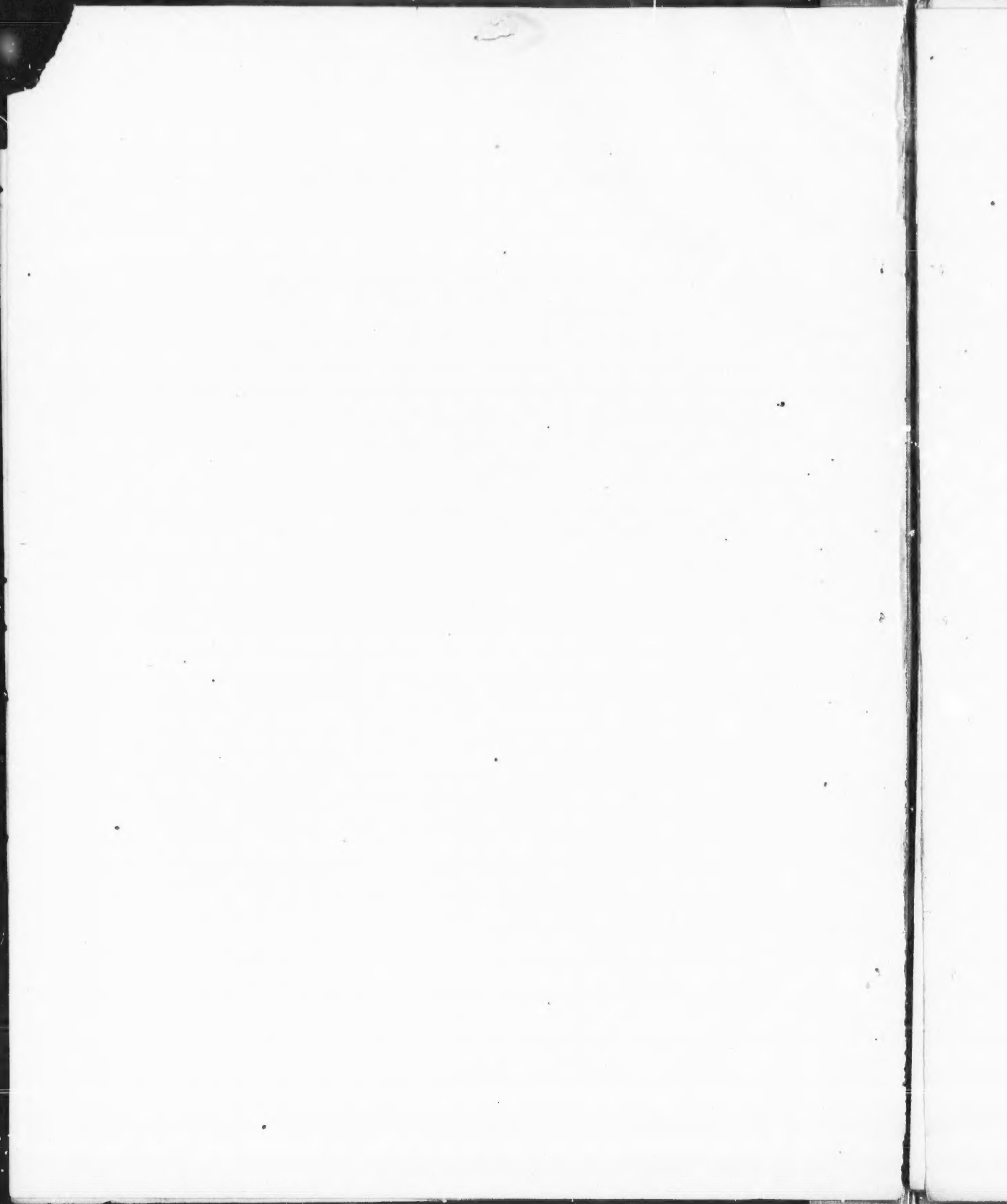
That the plaintiff, on the shore of the Bras d'Or Lake, near Christmas Island, in said County, and between high and low water mark, built a platform stage and wharf, and the defendants broke and entered thereon, and destroyed the said platform stage and wharf: 30

And he claims six hundred dollars damages.

Issued the 15th day of APRIL, A. D., 1879.

C. E. LEONARD,
Prothonotary.

N. L. MACKAY, *Plaintiff's Attorney.*



PLEAS.

CAPE BRETON, SS.

IN THE SUPREME COURT, SYDNEY, 1879.

JOHN MCKINNON, *Plaintiff*.

40

vs.

JOHN McNEIL, HECTOR McNEIL, RODERICK McNEIL, MICHAEL McNEIL, ALEXANDER MCKINNON, HUGH McNEIL, MURDOCK MCKENZIE, and HECTOR MCKENZIE, *Defendants*.

1. The above named defendants, John McNeil, Hector McNeil, Roderick McNeil, Michael McNeil, Alexander McKinnon, Hugh McNeil, Murdock McKenzie, by Murray Dodd, their Attorney, for a first plea to the first count of the plaintiff's declaration, says, that they did not seize and take away the plaintiff's goods that is to say—sixty wharf logs and one hundred and sixty logs, nor any of them, as alleged.

2. And for a second plea to the said first count of the plaintiff's declaration, the defendants say that the said goods were not the goods of the plaintiff, as in said declaration alleged.

3. And for a third plea to said first count, the defendants say that the said goods were not, at the time of the alleged taking away and seizure, in the possession of the plaintiff. 50

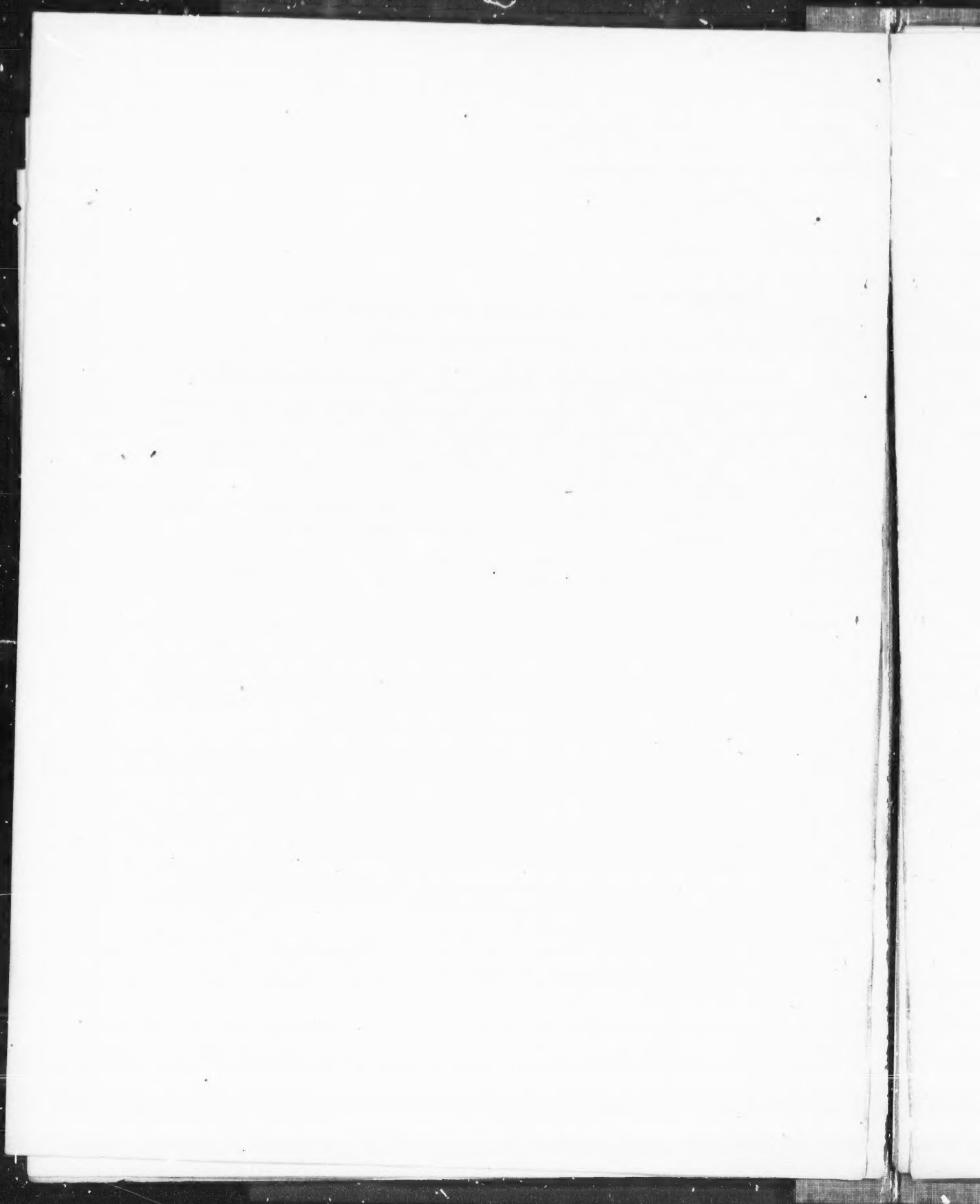
4. And for a fourth plea to said first count, the defendants say that at the time of the alleged taking away and seizing, the land upon which the said sixty wharf logs and one hundred and sixty logs were put or placed, was the freehold of the Church of Saint Barra, of the Roman Catholic Corporation of the Diocese of Arichat; and the defendants as the servants, and by the command of the said Corporation of the Diocese of Arichat, because the said wharf logs and logs were then wrongfully in and upon the said messuage encumbering the same, and doing damage there to the said corporation, did, by the command, and as the servants of the said corporation, the owners of the said freehold, remove the said logs from the said land.

5. And for a fifth plea to the second count of the plaintiff's declaration, the defendants say that they did not seize and take away, and cast the same adrift, a platform stage and wharf at Christmas Island, as in said count alleged. 60

6. And for a sixth plea to said second count, the defendants say that the said platform stage and wharf were not, nor were any of them at the time of the alleged seizing, carrying away and casting adrift, nor at any other time, in the possession of the plaintiff.

7. And for a seventh plea to said second count, the defendants say that the said goods in said count mentioned and set forth, were not, nor were any of them, the goods of the plaintiff, as in said count and declaration alleged.

8. And for an eighth plea to said second count, the defendants say that at the time of the alleged seizing, carrying away, and casting adrift, the Church of Saint Barra at Christmas 70



Island, of the Roman Catholic Corporation of the Diocese of Arichat, was lawfully possessed of a certain messuage, and the said messuage was the freehold of the said Church of Saint Barra of the said Roman Catholic Corporation of the Diocese of Arichat, and the said platform stage and wharf were placed wrongfully on the freehold of the said Church of Saint Barra, to the damage and injury of the said freehold; and they, the defendants, as the servants and by the command of the said Corporation of the Diocese of Arichat, because the said platform stage and wharf were then wrongfully in and upon the said messuage, encumbering the same, and doing damage there to the said corporation, did by the command and as the servants of the said freehold, remove the said platform stage and wharf from the said land, which are the alleged trespasses.

9. And for a ninth plea to the third count of the plaintiff's declaration, the defendants say that the plaintiff did not build a platform stage and wharf, as in said count and declaration alleged. 80

10. And for a tenth plea to the said third count, the defendants say that they did not destroy the said platform stage and wharf, as in said count alleged.

11. And for an eleventh plea to the said third count, the defendants set forth the same allegations and defence as contained and set forth in the eighth plea, and allege that the second, third, fourth, and fifth counts of the plaintiff's declaration are substantially for the same cause of action.

12. And for a twelfth plea to the said third count, the defendants say that at the time of the alleged destroying of the said platform stage and wharf, the said goods were not, nor were any of them, in the possession of the plaintiff. 90

13. And for a thirteenth plea to the fourth count of the plaintiff's declaration, the defendants say that the plaintiff did not construct a platform stage and wharf, as in said count alleged.

14. And for a fourteenth plea to the said fourth count, the defendants say that the said platform stage and wharf were not, nor were any of them, in the possession of the plaintiff at the time of the alleged trespass.

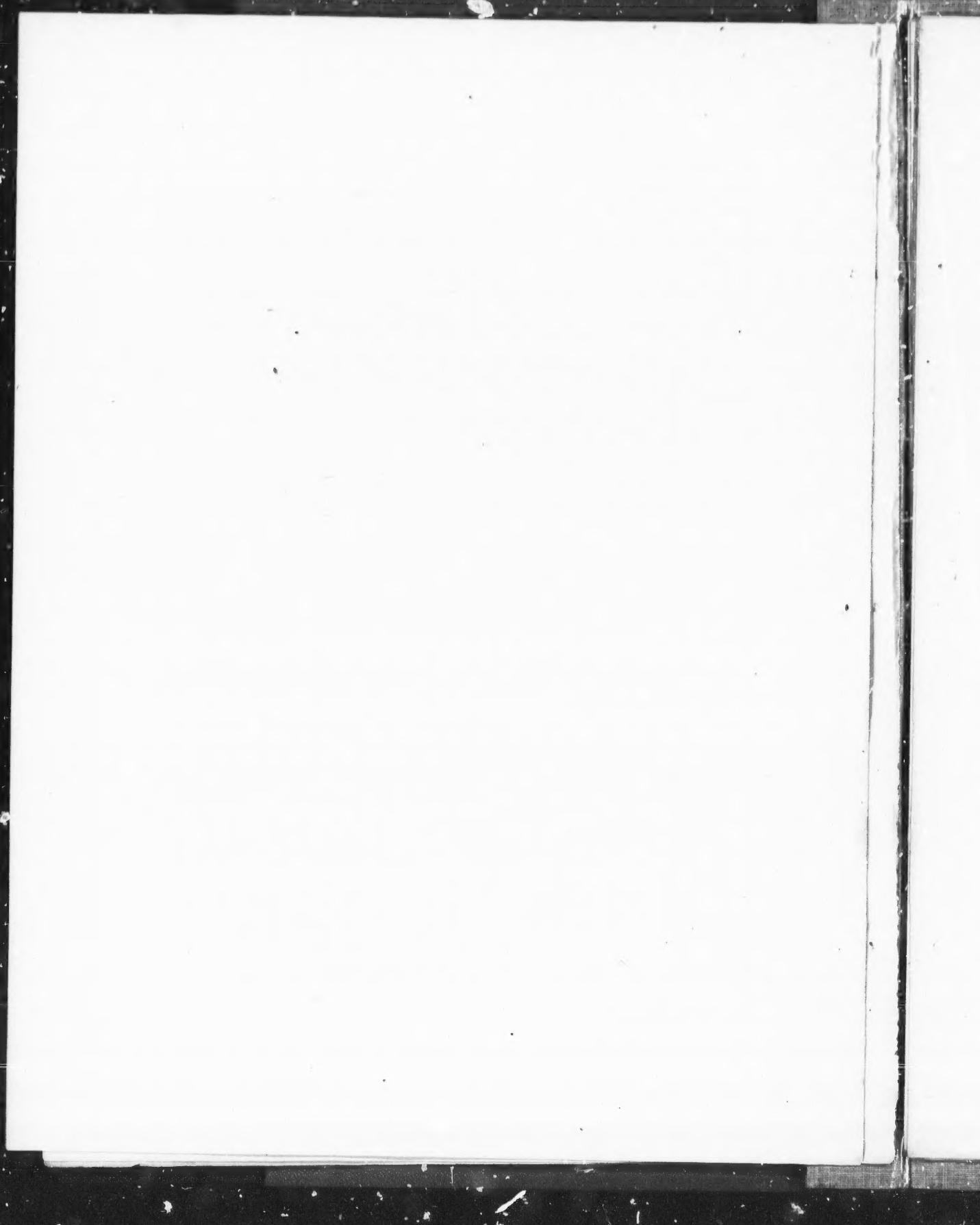
15. And for a fifteenth plea to the said fourth count, the defendants set forth the same allegations and defence as contained in the eighth plea.

16. And for a sixteenth plea to the fifth count of the plaintiff's declaration, the defendants say that the plaintiff did not build or erect a platform stage or wharf at Christmas Island of logs and timber, as in said count alleged. 100

17. And for a seventeenth plea to the said fifth count, the defendants say that they did not cast adrift, or break up, or destroy, or injure the plaintiff's platform stage and wharf, as in said count alleged.

18. And for an eighteenth plea to the said fifth count of the plaintiff's declaration, the defendants set forth the same allegations and defence as contained in the eighth plea.

19. And for a nineteenth plea to the sixth count of the plaintiff's declaration, the defendants say that the said land was not the land of the plaintiff, as alleged. 110



20. And for a twentieth plea to the said sixth count, the defendants say that they did not break and enter certain lands of the plaintiff covered with water, situate on the points adjoining the glebe lands near Christmas Island, nor did they destroy, nor deprive the plaintiff of the use of a platform stage and wharf erected thereon, as in said count alleged.

21. And for a twenty-first plea to the said sixth count, the defendants set forth the same allegations and defence as contained in the eighth plea.

22. And for a twenty-second plea to the seventh count of the plaintiff's declaration, the defendants say that the plaintiff did not, on the shores of Bras d'Or Lake, near Christmas Island, between high and low water mark, build a platform stage and wharf, as in said count alleged.

23. And for a twenty-third plea to the said seventh count, the defendants say that they did not enter thereon and destroy the platform stage and wharf, as in said count of the plaintiff's declaration alleged. 120

24. And for a twenty-fourth plea to the said seventh count, the defendants set forth the same allegations and defence as contained in the eighth plea.

25. And for a twenty-fifth plea to the several counts of the plaintiff's declaration, the defendants say that the several acts and trespasses complained of were done and committed with the full knowledge, leave, and license of the plaintiff.

Yours, &c.,

To the Plaintiff or his Attorney.

MURRAY DODD, *Defts' Att'y.*

MINUTES.

120

McKinnon vs. McNeill.

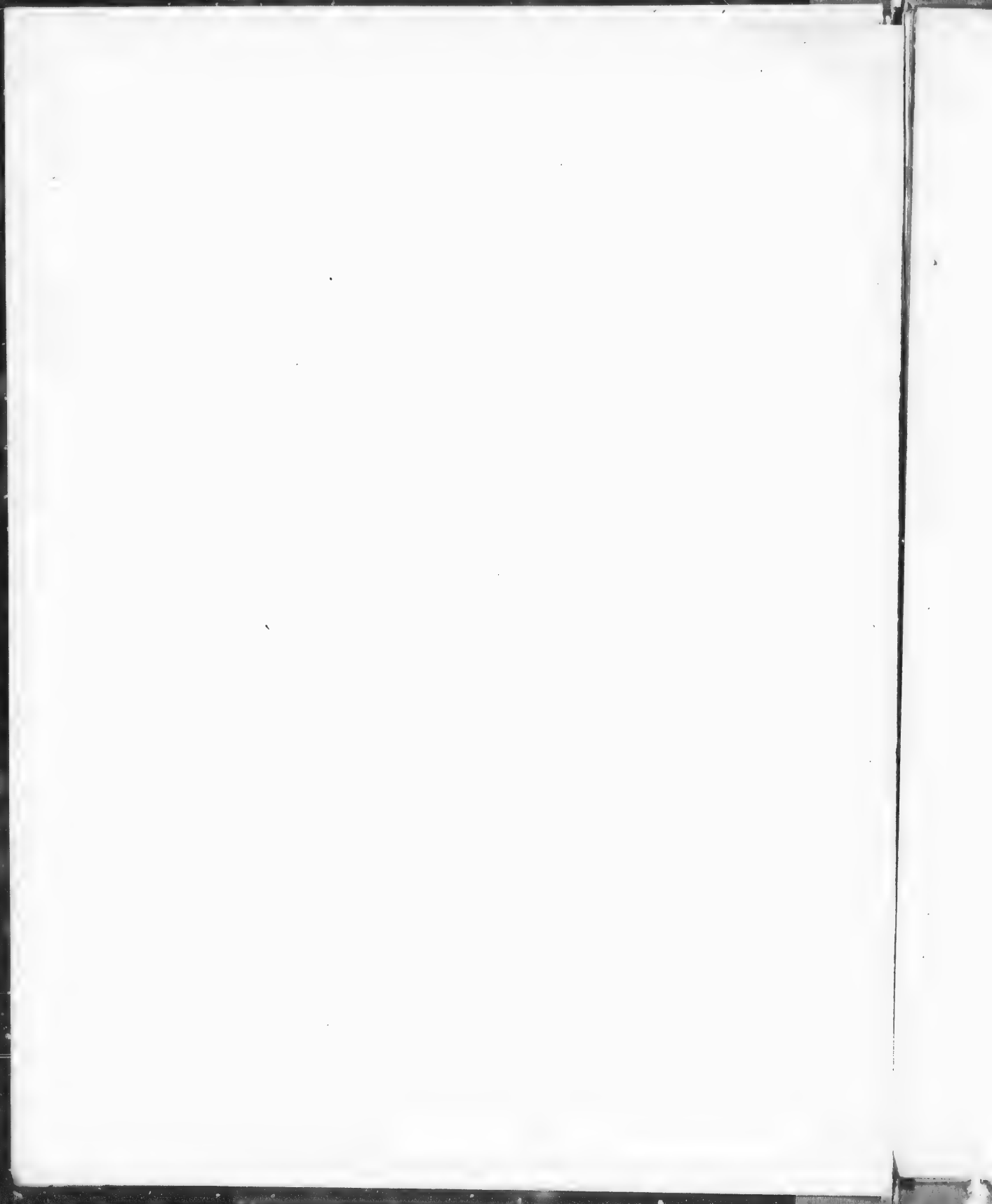
TRESPASS TO PERSONAL PROPERTY AND TROVER PLEAS INTERAL TITLE IN A ROMAN CATHOLIC INCORPORATION, AND THAT DEFENDANTS REMOVED TIMBER BY ORDER OF INCORPORATION.

McKAY opens at 10.50.

HUGH MCKENZIE, sworn. County Surveyor. This is a copy from Crown Land Office of the section of the County at Grand Narrows; a lot is laid down marked Hector McDougall, Lot No. 15; there is a creek laid down on the west line near the chapel, which is west of it. The sketch marked "A J" is a good representation of the locality. The west line of number fifteen runs across the creek to the harbor. The plan or map also gives a fair representation.

Cross-examined. I made sketch; it is not a copy of the plan; it is enlarged, and gives position of building, &c. I am not responsible for the particulars. Did not see plaintiff's platform. Lot number fifteen is on plan, and depicted as in paper read to me. 140

Re-examined. Made no actual survey of the property; no road or wharf laid down on plan; part of road to public wharf runs through the chapel land; eastern entrance of harbor is closed



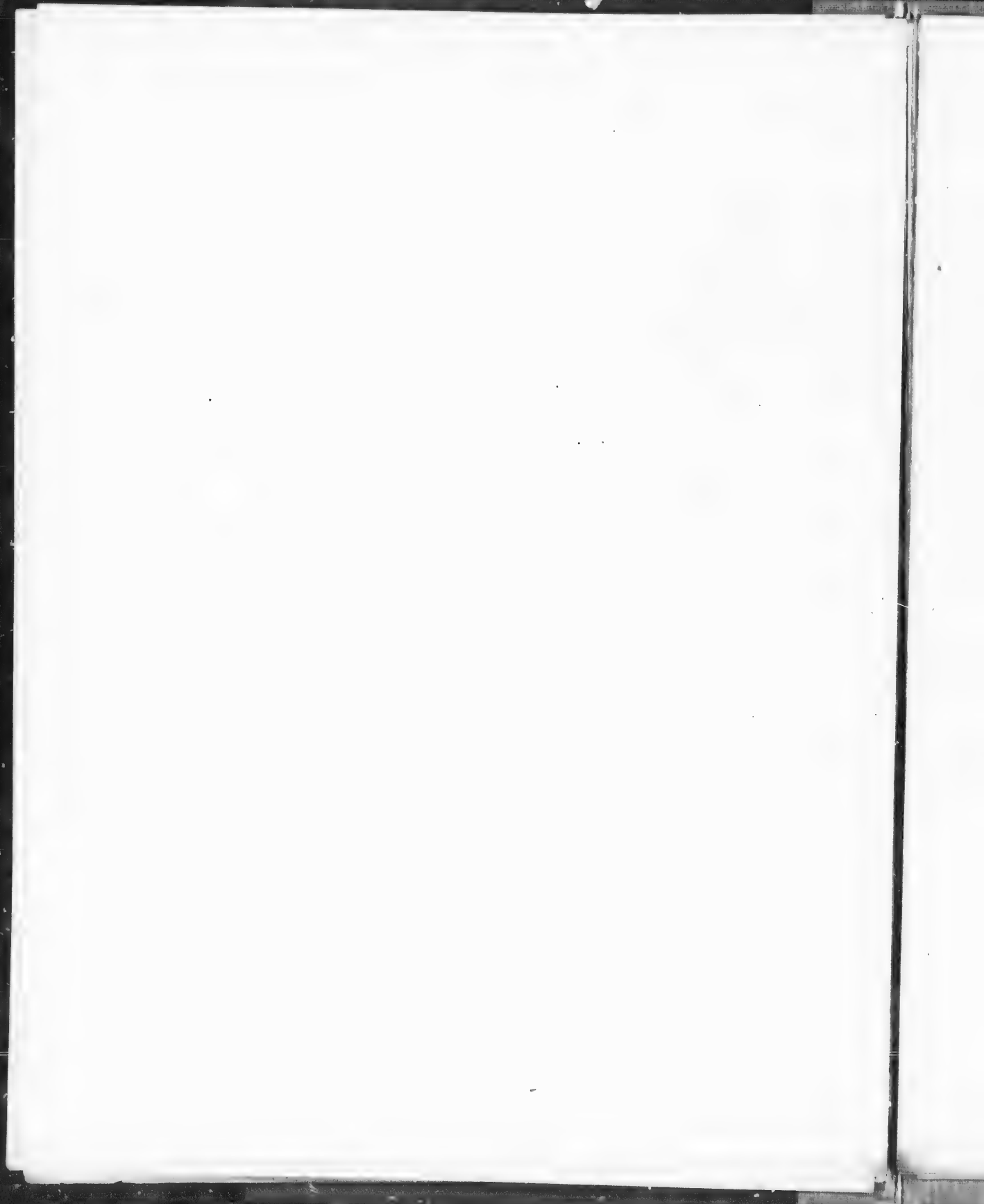
by a beach. [McKay tenders in evidence copy of a grant; also notice of intention to produce copies of deed and grant. Service admitted, and affidavit of search. Copy put in and read of grant from the Crown to Hector McDougall of lot number fifteen, with plan annexed, dated November 4, 1833. Marked "B. A. J."] The west line in grant runs across a small inlet, which can only be the creek. There is no other creek there, but the west line of fifteen on the plan extends only to the creek, and does not cover it. The distance given in the grant for that line would go across the creek and to the shore. I consider that this discrepancy is owing to an error in preparing the plan. 150

Cross-examined. 109 claims may be several chains less than that when it comes to be surveyed; by the scale it is one hundred and eight chains to the shore.

Re-examined. Sheppean is intended for one hundred and nine. It would only be ninety-seven to the creek.

[Witnesses ordered to retire except plaintiff and defendant. I permit only one of the defendants to remain to instruct counsel, as it has been avowed by defendants' counsel that the defendants who are also called as witnesses are only nominally defendants. Dodd objects.]

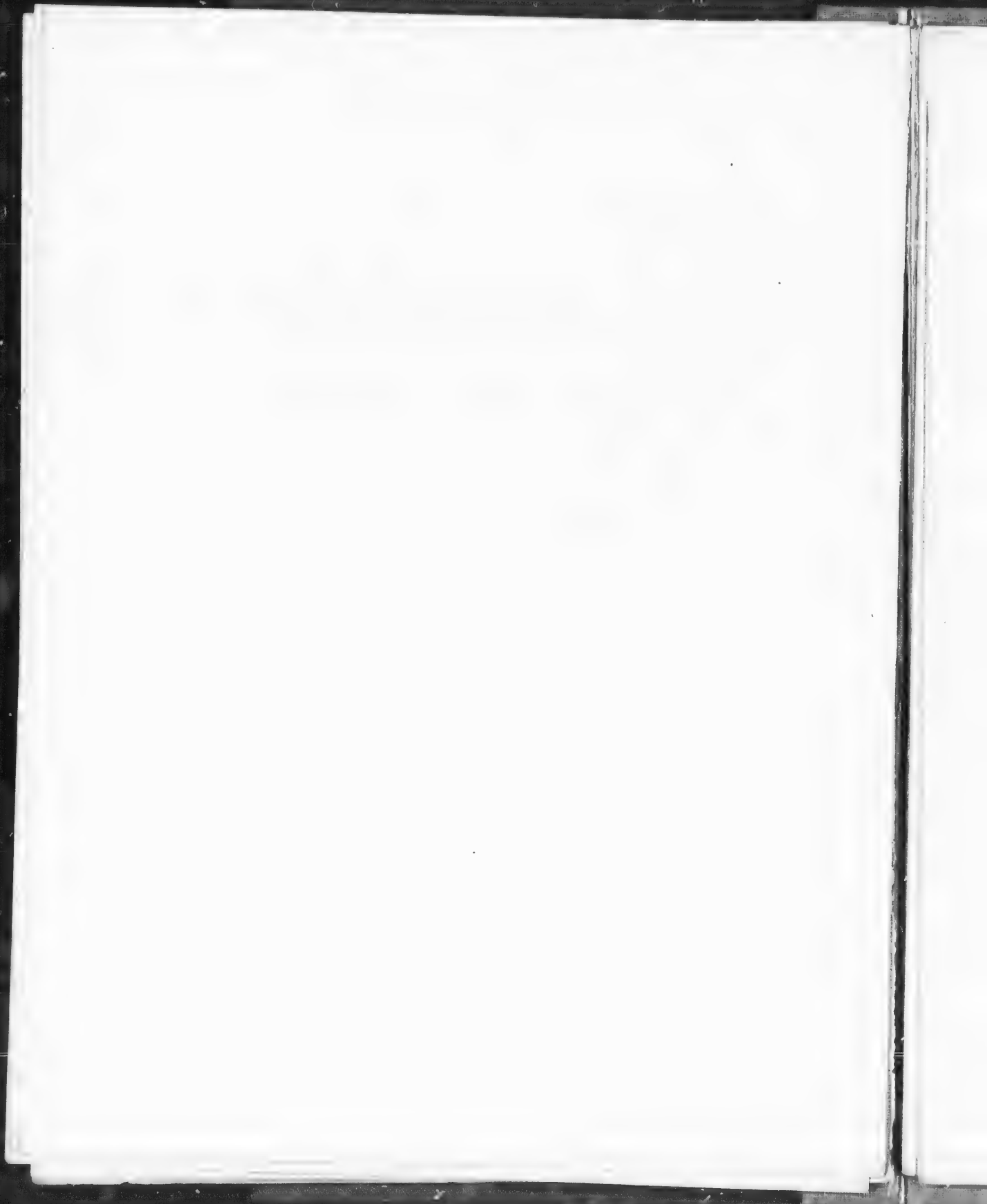
JOHN MCKINNON, plaintiff, Grand Narrows. Have lived alongside of Hector McDougall's Lot for about thirty-two years. This sketch, "A," shows position of platform; it is number fifteen, the public wharf is as marked on sketch. I am a farmer, fisherman and shipwright; have built eleven vessels, three at or near Christmas Island, west of public wharf. It was a more convenient place than at the point. I put up platform the last part of October and November, 1877, to build a vessel on. I built below low-water mark; got the logs in the woods and hauled them out; I think one hundred or over one hundred wharf logs; I intended to build it substantial, to build more vessels on. They were laid and fitted together as a wharf. I had ship timber, two hundred and fifty or three hundred pieces. The ship timber was worth £40 to £50; logs worth a dollar a piece; some of them were thirty-eight feet long; I had not laid the keel, I had only laid the timber on the platform. I got the last of the timber on the platform one evening about ten o'clock, about the 15th November. On the 15th November, very early in the morning, I saw from my house, going to the priest's house, about twenty-six men; they went from his house to the chapel; the priest met them there after five to ten minutes; the priest went home, and the men to the platform; they took stakes and poles from a fence they had to cross; I saw them putting the timber adrift that was on the platform; they set it all adrift; they set the timber that was on the platform adrift also, the whole of it. I spoke to them; I said to them that they were cruel men to destroy my property, which was not doing them any harm, and it was better for them to leave it alone; I spoke before the whole of them; they could all hear me; all the defendants mentioned on the writ were there, and heard me; they all took an active part in removing the logs. My son John came down and said, "you devils, leave my hard work alone;" John was helping me with the work; this was while they were destroying the property; they were excited; six or seven of them pursued John with stakes; they proceeded with the destruction afterwards; then sixteen of them went to my house; I had gone up before them; they wanted John; I recovered a few sticks of the ship-timber, not much, between thirty and forty sticks, and I used about twenty of them in another vessel. Knew late Hector McDougall; his west line is correctly marked on the plan lot; the grant plan should show the line across creek to the shore; the plan annexed to original grant showed the 160 170 180



line running across the creek to the shore; I had it in my possession; I know west line of number fifteen; saw it as long as thirty-two years ago, and twenty-eight years ago; it was marked by blazes on little bushes; showed lines about thirty years ago to Rev. McGillivray; it was about twenty-eight years ago: he was predecessor of the present encumbent; he asked me, as he wanted to clear the Glebe land up to the line; he did clear it up to the line on this point where the platform was; he left the blazed trees; I cut bushes to clear a road to the platform; the point was only used as a boat landing. Hector McDougall is dead; he had a daughter, Mary, and a son, Alexander, who are living; also, a daughter, Catherine, and his widow, Sarah, all of them signed a deed to me, except Catherine. This is my deed; the grantors signed in my presence. [Deed tendered, 15th August, 1877, put in and read, marked "C. A. J." Deed of the point including the locus.] 190

Cross-examined. I built another vessel since inside the creek on my own land; was kept back nine or ten months in building her by the trespass. I estimate my loss at five hundred dollars or six hundred dollars; less would not pay me. [Proves notice marked "D. A. J." Put copy to each in P. O., prepaid, a day or two after date December 6, 1878. [Put in and read. Writ put in. Date 15th April, 1879.] Gave a notice to James McDougall same as this.] 200

Cross-examined. Lived at or near Narrows since 1817; know the Point these forty years; there was a chapel then, the same that is there now. The lot on plan west of the Point is the glebe lot, and contains the chapel and the priest's house. I recognize plan of glebe land attached to grant shown to me, divided by the west line of Hector McDougall's land. The Point has not been cleared, or any part of it, in my recollection; there is wood on it yet; original growth, except a small corner; it was "out" as a Common; nobody was using it; I saw cattle on it; the priest's cattle used to be there mostly. From the main road you could get to the Point by crossing in a boat or by going through the church property. The same road leads from the east to the chapel; after it was made it was made to the wharf; the roads separate at the bridge; it is eight or nine years since the road was made to the chapel; will not swear it was not sixteen years; when bridge was first built there was a gate at end of bridge; road to wharf on chapel ground; the gate is still there; the east post of gate is two feet west of road, but was west of McDougall's Line. The northern end of bridge strikes glebe property; south end of bridge begins on east side of line on lot number fifteen; the bridge is about two chains long; the span is between ten and fifteen feet; there is an abutment filled with brush and gravel; the width of creek there is about two chains; the road starts from a piece of ground considered as part of the chapel or glebe land (marked "X" on sketch); this included the first part of the road down to the creek; there is a curve in the road when it gets across the creek; from the main road it runs along straight till it comes to the marshy place, then turns west a little. My land lies west of McDougall's Line, and runs down to the brook, and by the brook to McDougall's Line. There is a fence on my east line between me and the glebe land marked "X;" the land marked "X" is now occupied by McNeil. No gate now between main road and bridge. There is one across the bridge; this gate prevents cattle from going from main road on to the Point. In 1877 I laid out to build three vessels; have not built them; have one under way now; I wished to build near the public wharf; asked Father McKenzie for permission to build; did not ask for any particular spot; probably I indicated partly where I wished to build. This was at the priest's; I think it was in the house, in his usual sitting room, on right-hand side of front door as you go in; I mentioned once a place west of public wharf; the first time I mentioned a place somewhere east of the wharf. All the conversations were in the priest's house at that time. 210 220 230



The last time I pointed to a place west of the wharf; he said he would not allow me; said he would make enquiries the first time. The last time he said the Bishop had left it all to himself and the Wardens; that was in March, 1877. I was getting ready then for building; I was cutting timber then, and hauling it on the ice outside of the Point. Father McKenzie warned me not to build on the glebe property, but did not mention the Point. I had heard a rumor that the church claimed the Point. I got a notice from Father McKenzie; I have not got it in my possession; believe I sent it to the Bishop. I don't think he mentioned the Point in the letter. [McKay objects. No notice to produce. Notice served five or six days ago.]

240

Cross-examined as to notice. The Bishop resides at Arichat. [I admit secondary evidence. McKay objects.] The letter said I would not be allowed to build about the shores of the glebe property; I had put none of the property on the shore, but when ice went away it drifted about in the pond; it was laid outside of platform. I collected it again, and took it where I built the platform. While building I hauled some of it on to the shore, but not on the grass; the highest sticks were where the tide left them; it was scattered about the shores from May to October; some of it went ashore on the Point. I lost none that I know of. Don't remember asking permission again from May to October, or until I built platform. When I commenced I brought a raft of logs near the line which runs across the Point. I told Father McKenzie at the shore that I would not build a wharf there. There was a stake there then at the line. I was at the west side of the line. I believe I moved my timber from there to the east side of the line. The wharf logs were not there when ice broke. The timbers, some of them, became "dry" or rotten before I could use them. I got thirty or forty pieces after ice broke up, mostly the next spring. The timber was birch and beech. Had ship timber on the ice at head of creek.

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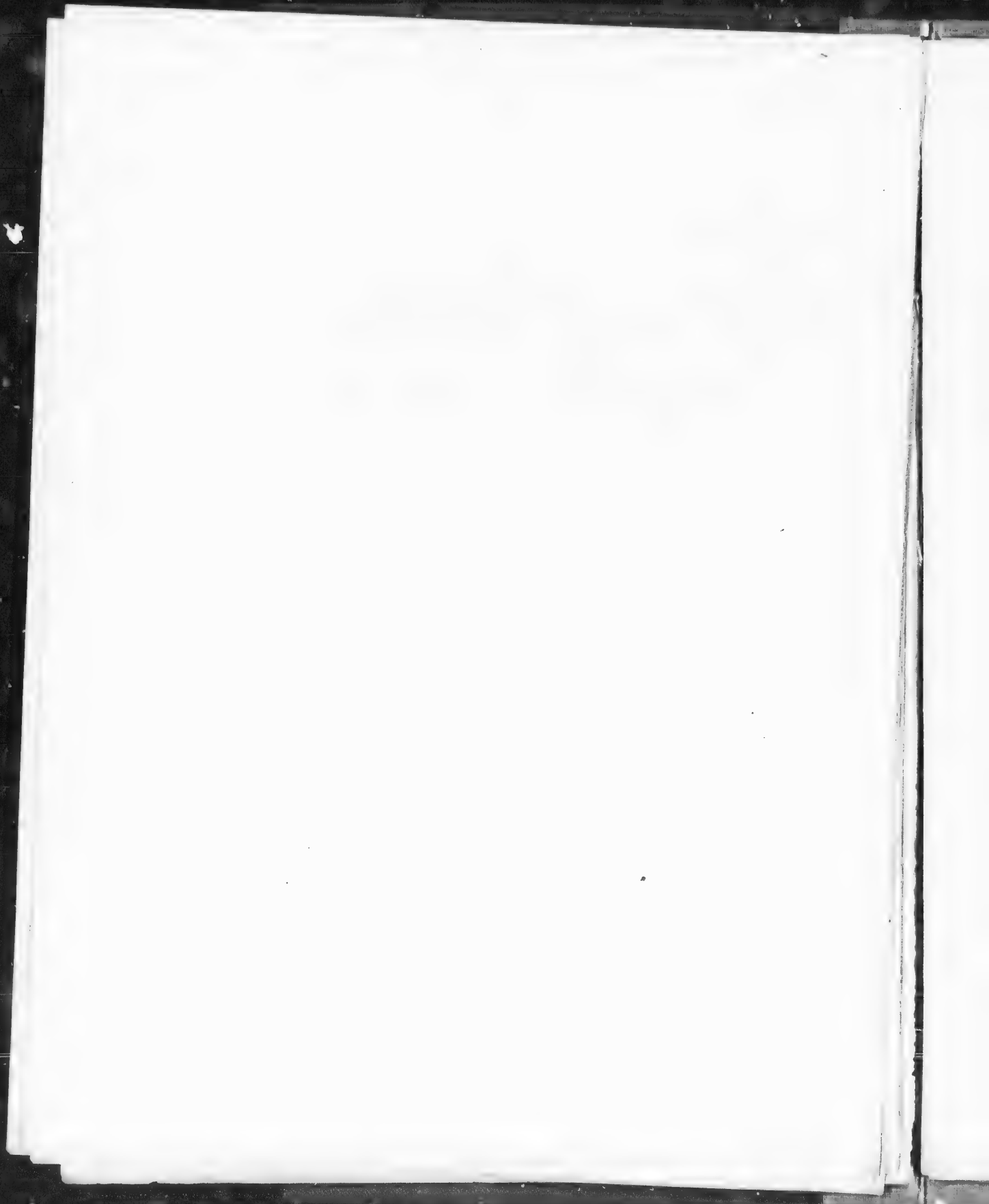
Adjourned 2.30.

THURSDAY, 26th August, 1880—10 A. M.

Cross-examination of Plaintiff, John McKinnon, continued. In the spring I looked after the scattered timber, and took care of it. Did not bring them all to the platform until the autumn. A few sticks remained where I left them, as it was shallow; some of it would not float, as it was so heavy. Birch and beech timber will sink soon after being placed in the water; some of it will sink while green. I had there part of the timber for one vessel. I commenced cutting in October, 1876; two of my sons assisted me. It was smoothed on the sides only. No knees. In October 1877, I put it all in the platform. Some of them were in a condition to float, and some not. I put more timber in the platform than was on the ice. I took steps for a few days to recover the timber. The logs of the platform would float. No ties, no ballast; it stuck in the bottom; they were notched together; the upper logs kept the lower ones down. Some were eighteen inches diameter. Water was from two to four feet deep at the platform. The side of the platform next the shore was over twenty feet outside of high water mark, and about ten to fifteen feet outside of low water mark. There is scarcely any perceptible rise of tide; the difference in the water is caused by the winds. To build the platform we had to go on the land, all about it; we had a plank from the shore to the platform. Father McKenzie told me not to build on the glebe land shortly before I commenced the platform. I got my deed from McDougall's the previous August. The spring previous (1877) I asked the priest for leave to build on the glebe, and he refused. The grantors in the deed are Hector's children. I think there were three others not parties to the deed. [Question. Did children object to signing on the ground that it

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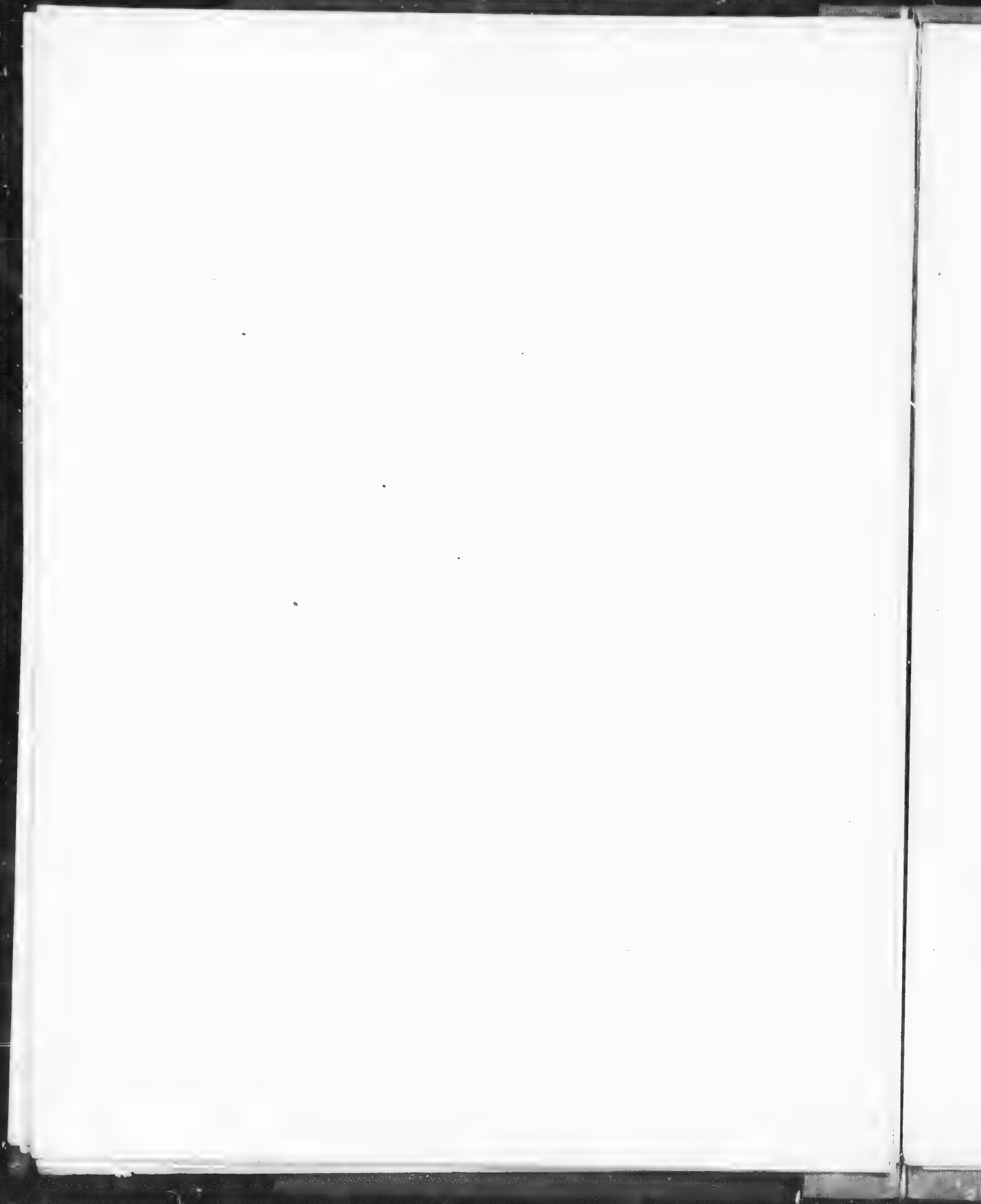
belonged to the church? McKay objects. I refuse testimony, Dodd object[ing]. After I got it executed and registered I went on with my work. Have built one vessel since; not yet finished. I did not intend to build three at a time, but in succession; from sixty to seventy tons each. I intended to build one smaller and one larger than sixty tons. I was building them for sale; value of timber £45; whatever recovered, 30 or 40 out of 250 or 300; a good many on the bottom about there yet. The wharf logs floated; most of them floated out through the entrance and up through the Narrows; there was an easterly wind; did not look after any of them; platform about fifty feet long and thirty-two to thirty-five feet wide. It was not planked; I was going to cover it with poles, but I put the timber on it in the mean time to keep it steady. The logs were about two and one-half feet apart. I used no logs at my new vessel, only some small pieces of second growth; only one or two. My son took two of the logs to repair a public road, but they were not used. The platform was in the water opposite the property I bought there. No logs or timber on the shore at the time; had no other on the Point to my knowledge. [Witness explains one of his statements; not material.] 280

Re-examined by Mr. McKay. There was no fence on the west side of the Point until about three years ago. There was a fence from the west of the Chapel Brook over towards the pond behind the public wharf, about thirty-seven years ago. No fence east of the chapel until three years ago; it was all open; my own cattle, and others besides the priest's, I have often seen there. The Point was never cleared nor cultivated. I sent the letter myself, compared and prepaid, to all the defendants. There is no entrance from the east into the house; it is quite closed up by a bank of sand—a sand beach. Have seen vessels come up to end of my platform to anchor; no wharf east of that. I had a brig of over 150 tons anchor to the east of my platform. Parties landed with boat on the Point where I had my platform; I have used it for that purpose thirty-four years. 290

Re-examined. Have had a boat most of the time for thirty-five years. I usually kept my boat at the Point. I was away six or seven years; went to farm; came back; I think about sixteen or seventeen years; eighty. Had no boat there during that time. Had not a boat a quarter of the time since I came back. I had the use of my neighbor's boat until I built a boat three years ago. Where I went was about three miles distant. It was John McDougal, my next door neighbor, that had the boat. After my property was destroyed had no conversation with Father McKenzie about it. 300

JOHN J. MCKINNON. Son of plaintiff. My father and I had platform in November, 1877. I assisted him in building it. It was destroyed by the defendants and others. The defendants were all, as read from the writ, engaged in destroying it; they had levers; they threw all the ship timber into the water; we had been getting the timber for a year or thirteen months. We tried to stop them; they turned on me and chased me, and threatened to take my life. There were one hundred to one hundred and twenty wharf logs and two hundred and fifty to three hundred pieces ship timber,—hard wood. 310

Cross-examined by Mr. Dodd. All of defendants took part; none of timber was put on the land at any time; none of it at any time was on the Point. The stage was about twenty feet from high water mark when an easterly gale. In moderate weather only a couple of inches difference of tides; at the inner end water was about two feet deep; sometimes we had a plank to get out. There was no grass on the Point at that place. I went down ahead of my father; I spoke to them civilly at first; asked them what they were doing there. They said it was none 320



of my business. I said they had no business to destroy my property; it was mine and my father's, in partnership; I told them they should not do it. There were about 250 to 300 pieces of hardwood timber, and I will say 100 to 120 of wharf logs. If I stated otherwise it was a mistake. I abused them; I threw stones at them; did not threaten them with an axe. Neither I nor my father had an axe; my father was present. I only threw one stone, and then they chased me. I went back again when they went back and wanted them to stop. It took them three or four hours to destroy the property. They kept me away. When I would want them to stop they would chase me away.

Re-examined. I owned nothing. There was no partnership, only I worked with my father and expected to get an advantage when she was launched. I bought none of the timber nor paid for any; my father was the owner. [Notice to produce put in by consent, dated 5th August, 1880. McKay tenders notice of action December 16th, 1878; put in and read, marked "E. A. J."] 330

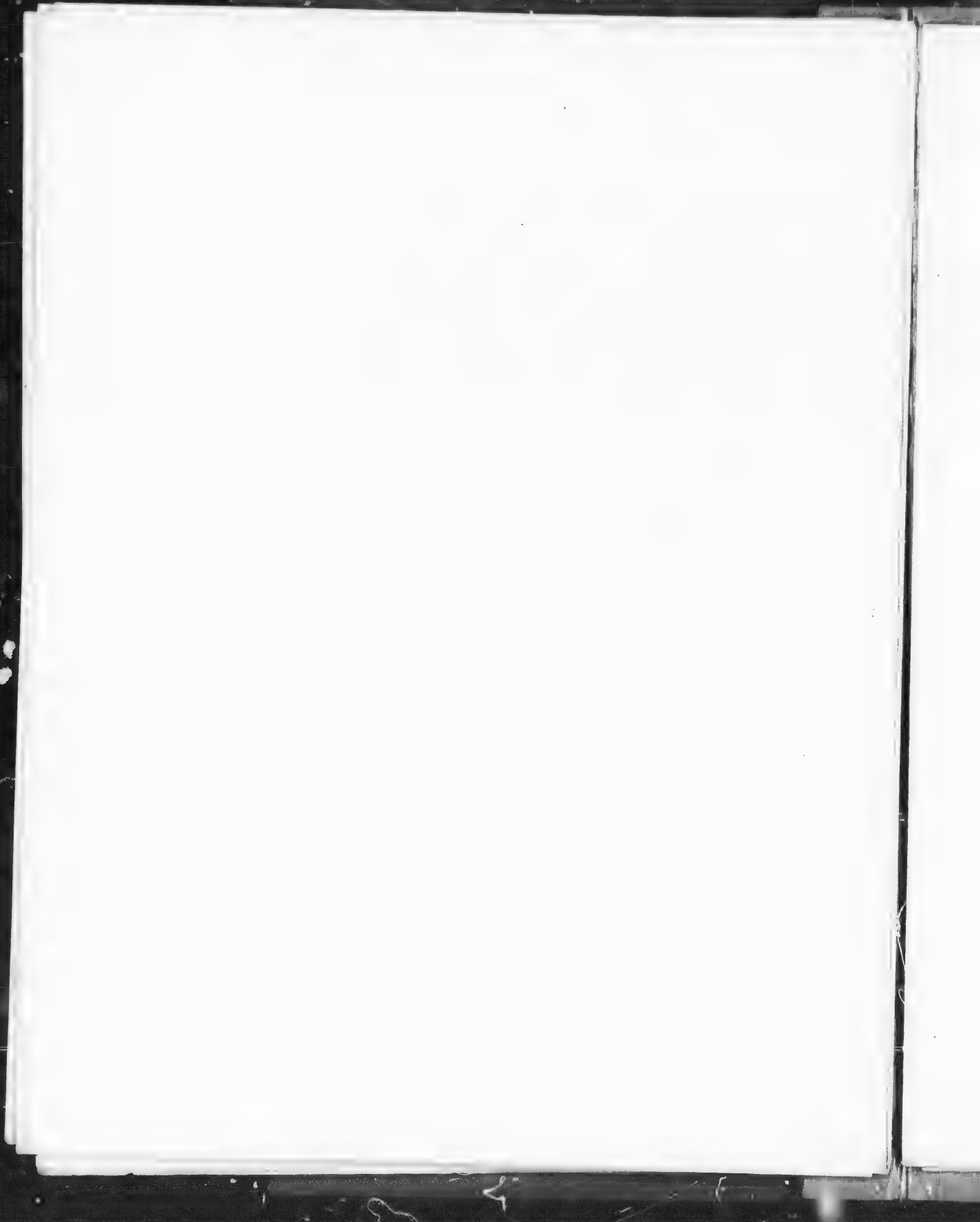
JAMES A. McDOUGALL. Know the Point. There is a little spot cleared, where they fasten their horses, near the bridge; it is a little cleared like. Have seen cattle feeding on both sides of the road; have used Point as a boat landing, and so have others, I think, as long as I can recollect. Remember of mailing letter to defendants; they were prepaid. I was Postmaster.

Cross-examined. I remember being there where the road is; never saw remains of fences on the Point. The gate has been there since road was built. I think Father McKinnon's servants put fence along the road. I never knew anything more of the Point but that it was attached to the glebe lands. The priest's cattle were pastured there as long as I can recollect,—the last four priests; the cattle of all those priests pastured there, for I did not see any fence to prevent them; never saw any fence except that put near the road since road was made. It is eighteen or nineteen years since Father McKinnon was the priest, and his cattle fed there. I have different times seen other people's cattle turned out by Father McKenzie's servants and Dr. Cameron's. [Answer to Court. I don't remember any time when cattle could get on the Point without going through the glebe land.] McKinnon recovered a good deal of the timber; saw it piled; I am clear to say he got thirty to forty; can't say more. Timber is worth \$6 to \$8 a ton; perhaps more. The wharf logs I saw were red spruce; hardwood timber would probably drift out of the harbor; some would sink; I only saw one stick of the timber sticking about afterwards. 340

Re-examined. My father burnt one of the sticks; saw none of wharf logs that were cast adrift piled up. Saw McKinnon's cattle put off the Point several times; have seen cattle put off three times whatever; am thirty years old; don't know of other than glebe cattle being there before bridge was built. Before the bridge was built I don't think cattle could get over the brook without crossing it above the fence between glebe house and chapel. They might have come from the west on the beach, as the fence ran down only to the pond, but only the glebe cattle could get on the Point without breaking through unless the gate was left open. It would not be safe for cattle to cross the brook below the glebe fence, which leads to the pond, and between that and plaintiff's fence.

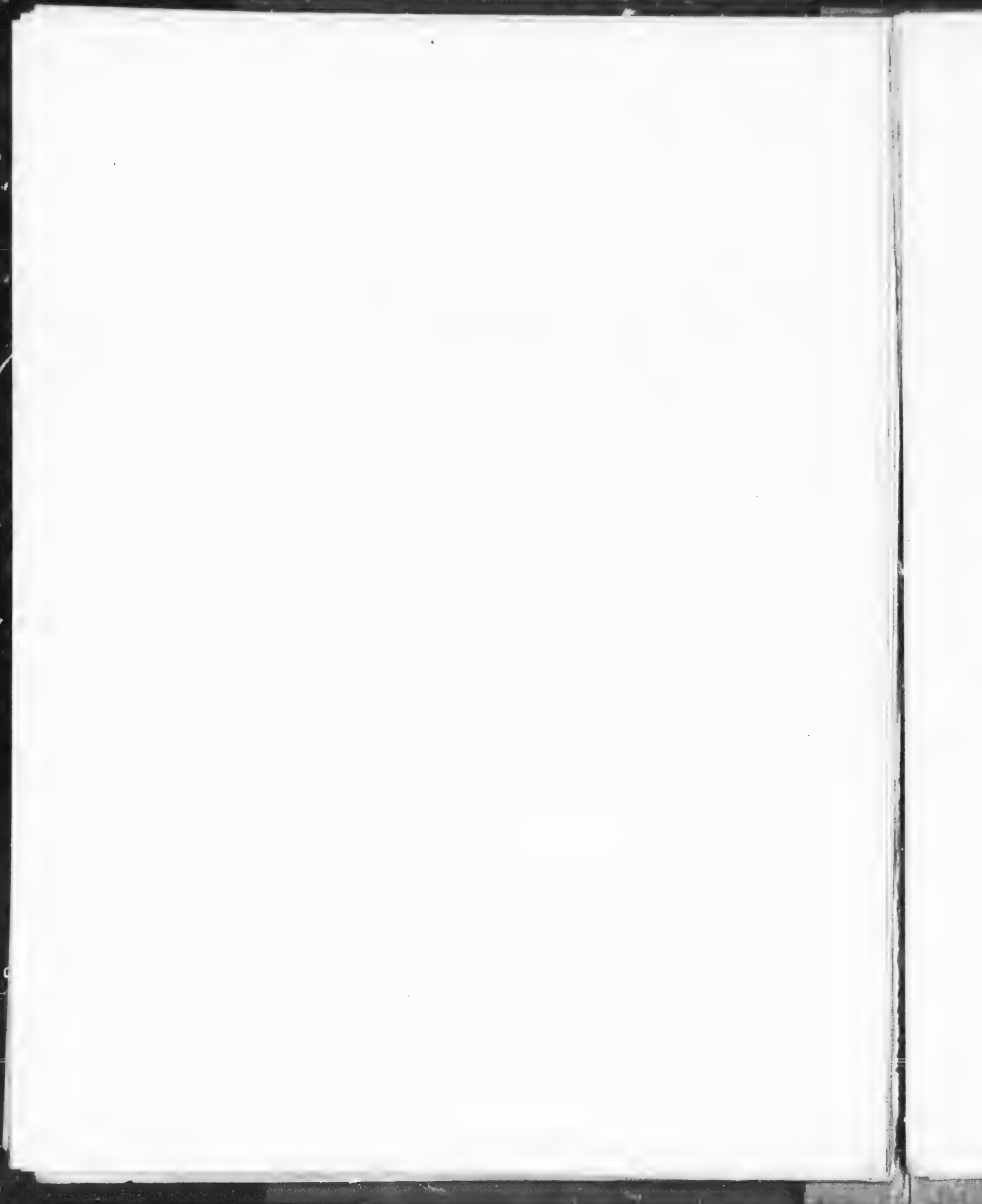
[Plaintiff rests.]

Dodd opens.



Rev. ——— McKENZIE, P. P., Saint Barra, in Diocese of Arichat. Know plaintiff; have been there over four years; know glebe land; have occupied to the water, including the Point; know a line surveyed across the Point, surveyed by Capt. Morgan; the line marked on both ends; not run through; my cattle roamed over that property; it was a pasture for pigs and cattle belonging to me. Some cattle used to get in when gate left open; the boy used to turn them out; I used to tell him. The parish priest has right to use all the glebe property. Plaintiff is one of my parishioners; he asked permission of me to build a vessel on this Point, as I understood him. He went to the window and showed me the place where he wished to build; not much more than this Point could be seen from that place; it was in front room, east end of the house; house faces south on the plan; the room on right hand as you go in; could not see public wharf from there. He pointed out with his hand the point on which he wished to build, to the best of my knowledge. This was previous to anything being done by plaintiff. I did nothing then but refer to the Wardens and the Bishop. I did that; was instructed to give an answer to plaintiff. I spoke to plaintiff verbally first, and told him he was refused permission. I sent him a letter; I kept no copy; it was forbidding him to build on any part of the shores of the glebe property. A quantity of material was then gathered; I think it was in the month of March, 1877; he hauled after that, and went on hauling—that is after being notified. When ice went away the timber was left about, and some of it partly on the ground at the Point, and partly in the water. I saw him hauling logs round the shores of the Point in October or November. I went down and told him he would not be allowed to build there. He had his horse there dragging timber on shore; his son was there. I believe he discontinued the work for a few days. The next time I went down the platform was constructed, did not examine it; it was partly on the Point and partly in the water; did not go close enough to examine it, but I considered so. I saw some sticks on the land; can't say if they belonged to the wharf or not. I authorized the Wardens and some of the people to remove what was on the glebe property; this was in November. Saw plaintiff after that—about a month or less; he came to see me; I may have sent for him; he appeared to be sorry; he claimed nothing; he may have said something about the timber, but I can't recollect; it was after that when I heard of claim for damages, and shortly before the writs were issued. I could not see the platform from my house; I could see the place. It was in the morning when the people went there; don't think they were there more than a couple of hours. The bank of the brook on one side from bridge at main road down to the cross fence is high. Cattle could always since I was there pass across the road to the Point, the fences of the road not being kept up. 370 380 390

Cross-examined. There was a fence on one side of the road only—the side next the Point; it is there yet; if kept up it would separate the Point from the rest of the property. There never was any distinction between the Point and the rest of the glebe. There are indications of its having been cleared east of the church, and past the line near the bridge; a small piece appears to have been cultivated. There is no fence between the south line of the glebe and McKinnon; the brook is the line; can't say whether cattle can get across. I have a documentary claim to the glebe lot. I hold the property as agent of the corporation—a documentary title to all except the Point. I think plaintiff's timber was on the east side of the line when he spoke to me—that was when I warned him to take them away. Some of the sticks were on the gravel. I saw timber in an old scow besides plaintiff's timber. The platform was very near the same place; perhaps a little to the eastward. I did not say anything about the point; particularly forbid him building on the glebe. I think the sticks I saw on the shore were the ends of timber built 400



in the platform. I suppose I could understand from him that he would look to the parties concerned for redress. [Original grant to the R. E. Corporation of Arichat put in and read, marked F. A. J., dated 30th July, 1878.]

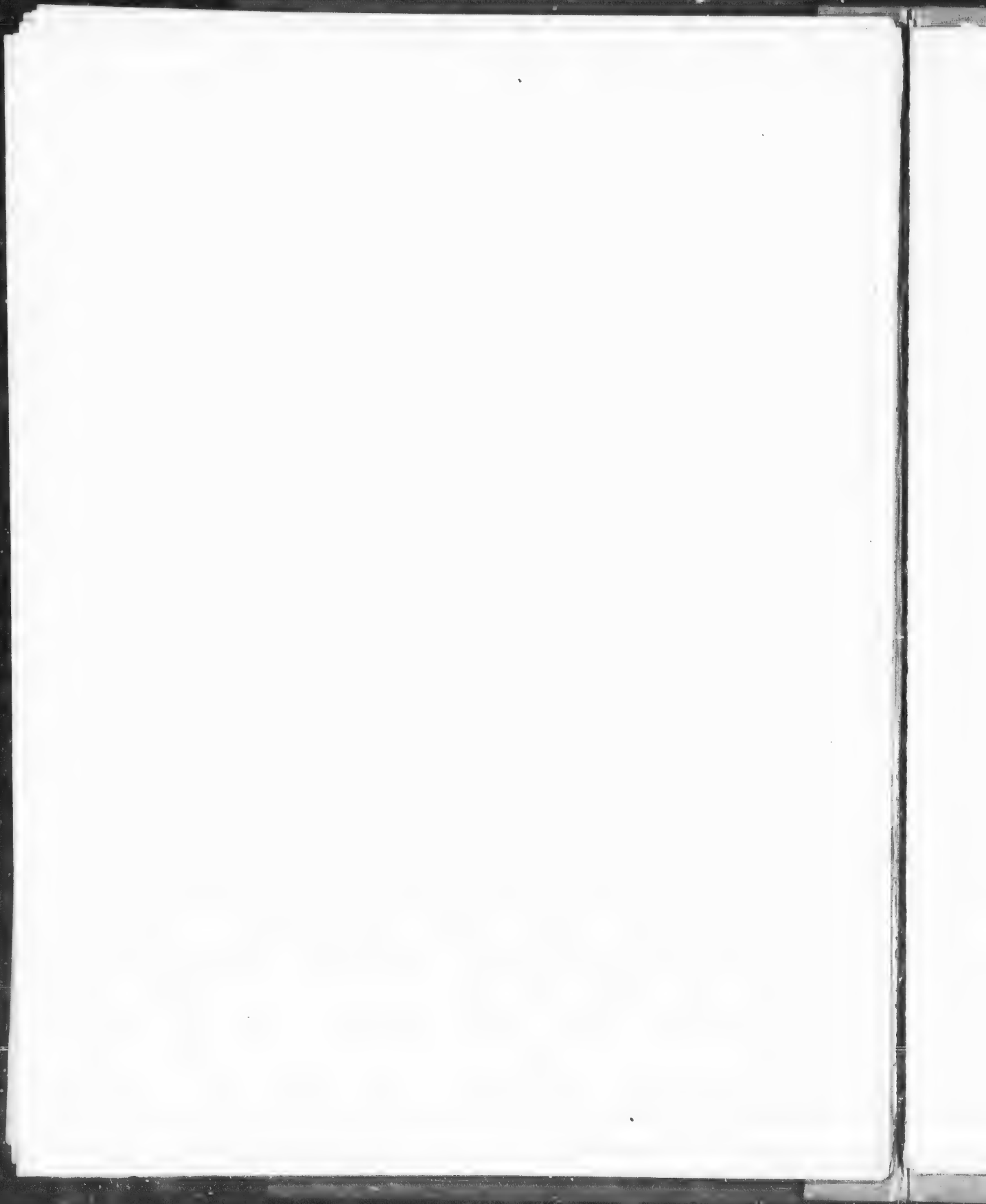
ALEXANDER MCKINNON, School Inspector, C. B. Know property in dispute. Came here in September, 1858, to live. Rev. Donald McKinnon was then parish priest there; he is now deceased. I lived with him on the glebe land. The first year I was teaching school. He exercised acts of ownership over this Point. A fence ran down the brook from main road, past where the bridge is now, to a point at deep water, east of McDougall's line, so as to shut out cattle. I used to help the boy at the fence; when I went there the fence was there; it was a brush fence, part old and part appeared new. The old part went east, past the bridge. Never saw any line pointed out across the Point. In my opinion all the wood growing there then was second growth. I have an idea where an extension of McDougall's line would chop off the Point. There were east of that line decayed stumps, and small spots which seemed to have been parts of a clearing. It was used as pasture for the priest's horses and cattle. No fence between that and the rest of the pasture. Nobody else pastured cattle there. There was only one general entrance to glebe lot from main road—it was a road down to the glebe house and thence to the chapel. Have known the property ever since, except the lapse of seven years, from 1802 to 1869. Was there during the seven years. Father McIsaac exercised some privileges. The gate was put there in his time; it was put there to protect the property inside of it. From the bridge up there is a swamp of perhaps one hundred yards, with a steep bank on the north side; for one hundred yards west of bridge it was impassable; it was possible to get up the bank above that, but there was a fence there; heirs of Hector McDougall lived there. The fence was run sufficiently into the creek to keep cattle from going round it. 410 420

Adjourned 5 o'clock.

FRIDAY, 27th August, 1880—10 A. M. 430

Alexander McKinnon's examination continued. During the four years I was there the fence down the brook was kept up. Never knew there ever was a line run across the Point.

ANGUS MCDUGALL sworn. Son of Hector; he resided at Christmas Island; his property adjoined Donald McNeil's, on the west; plaintiff bought McNeil's property; church property was owned by old Donald McNeil; I am forty-eight years old; was fourteen or fifteen when he died; saw no one but the priest exercising acts of ownership; saw the priest's cattle on it, and saw his servants clearing alders off it; it was after my father died; don't know of my father's cattle being sent there to pasture; the property was divided between three brothers; there was a meeting in my brother Sandy's house; there were present John Sandy McDougall and myself; also McKenzie (James) who was married to my sister; the sons were Donald, John, Sandy, and Angus; only two daughters living then, Mary and Catherine. Catherine was McKenzie's wife; Donald was then at Cape North. We three sons were living on the farm; Donald wanted to get his share before that, and it was set off to him by consent, on eastern line, and he sold it; we three agreed on our shares, and made marks, and left it to McKenzie to say which should be on the west; the next division fell to me, from the road to the rear. The parish occupied in front of me; my brothers got their share to the water; I only got to the road. I never claimed the front from that time. If my line had been extended it would have included the Point—the whole of it. I never claimed to the north of the road. It was about twenty-four or twenty 440



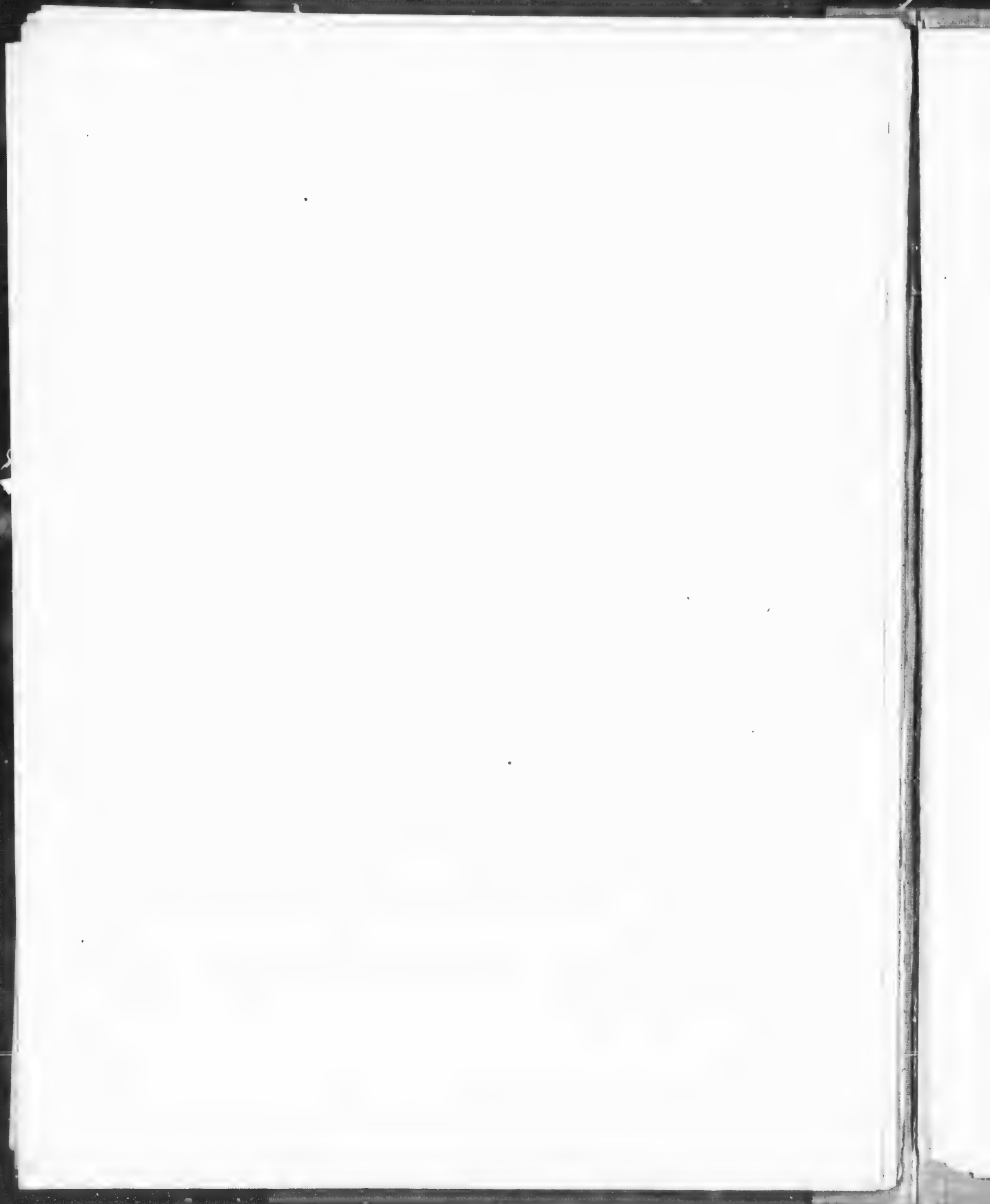
years, more or less, ago. Mary was then married, and living at North Sydney; she has never been back there. The girls have not lived on it since my father died. Father died on property; Rev. John Grant, P. P., attended him; he made no will by writing; never knew my father to work on the Point. The priests have occupied it by pasturing cattle. 450

Cross-examined. It is over twelve years since I saw servant clearing; it was east of my west line, on the Point; I could show the old mark of the line yet; I first remember the line twenty-five years ago; Crawley, I think, ran the line. There was the old foundation of a panel fence on the Point; don't know who put it there; saw no stakes or blaze marks; there were no Indians there in my childhood. At that time I think Father McIvan was the resident clergyman. My father in my memory cropped the land north of the road, in front of me. It is very shallow water at the Point; often landed there; did not often haul boats up there; it was not convenient. I never cut poles on the Point, unless it might be a bush for a shade going out fishing. Never took my cattle there; it was not convenient. 460

ALLAN MCNEIL sworn. I resided on Christmas Island about sixty-six years; born there; sixty-six years old. My father was Donald McNeil; we were owners of the property before the Church got it—the glebe property—also the plaintiff's farm. Know the Point well; saw Father McGillivray clear up the Point, all the stuff that was on it, and fill it up; he was parish priest at Grand Narrows; it was twenty-four or twenty-five years ago; he died in Antigonishe over twenty years since. Father McIntyre came next; he was there one year only; then Father McDonnell, who was there four years; then Father McKinnon, who died there; has not seen any one working there since McGillivray, but I have seen the priest's cattle on it ever since; no other cattle unless such as might stray in; have seen neighbors' cattle stray in very often, but the priest would not allow them to stay there; they turned them out. Fathers Grant and McIntyre were there before McGillivray; their cattle pastured there on the Point; saw the priest's pasture on the Point forty-five years ago to the best of my recollection. Since Priest Grant first went there was well on to fifty years; he was there eight years. From his time to the present the priest's cattle have pastured there. During McDougall's life I saw a fence there; the fence was there as far back as I remember anything; it was then an old rotten fence; no one was keeping it up; have seen no fence there since. The bridge was built when Caldwell was member for the County. 470

Cross-examined. Was present when the platform was destroyed; took no part in it; I told plaintiff they treated him right. Will not swear it was thirty nor twenty-one years since I saw McGillivray clearing; the parishoners cut the trees; I saw them chopping; can't swear to any man whom I saw cutting there; I think there were more than four; I think they used the poles cut for fencing; saw blazes of old line; knew it well; there was good pasture on the Point; most of it was grass; it was not cleared between chapel and line; there are alders, &c., same as on Point; there is no fence near the bridge, as brook is sufficient; there is no fence down from McKinnon's east line to the bridge; there is no fence now on any part of plaintiff's north line, only the brook; never saw a fence there; there might have been a fence there when my father came there, but not since; no division line between plaintiff and the glebe, except the brook; the priest's cattle could come down the brook and cross, if they could get across; there is no bank at McKinnon's northern line to keep cattle from crossing; they could cross it if they choose; never saw cattle cross. 480

RORY MCLEAN. Born and lived at Narrows, close to Christmas Island; to the west of it; I know the Point; I worked on the Point one day cutting bushes out, or in at the line—about the 490



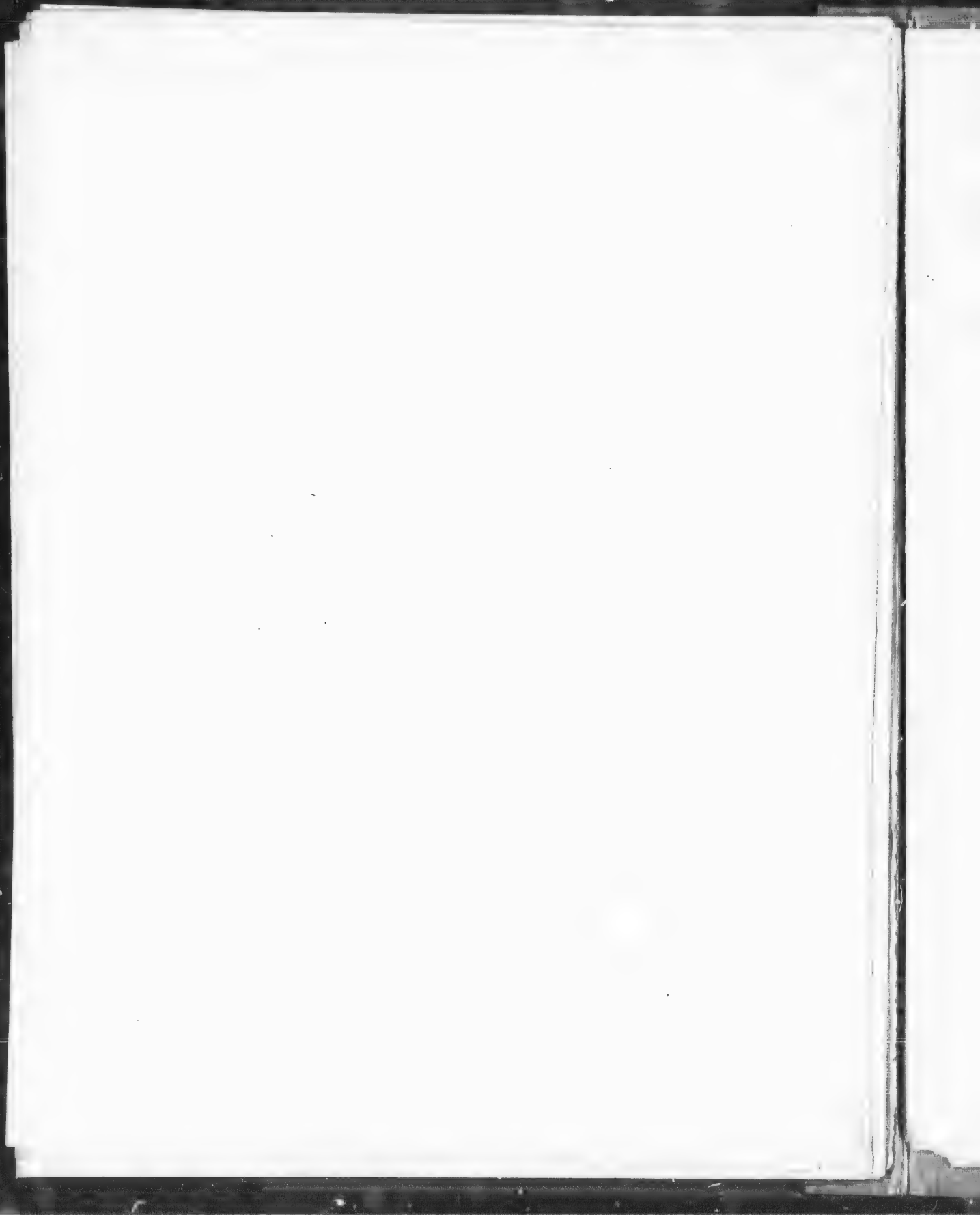
line; it is about twenty years, more or less; was cutting for the glebe house; McGillivray was parish priest; I think the priest told me to go there; I think there were three or four working with me, all cutting at one fence; there were people before us cutting the same year; it was var and spruce; did not cut all; about an acre; one end was near the shore, from the salt water to the pond near the bridge; the others were cutting at the same place on the Point, so also those who cut before us, were cutting on the Point; can't say about the line; those before us cut about another acre; did not pile it; there was pasture there on the Point as there is now; the priest's cattle pasture; remember them going there a long time—forty years ago; I think it was common for all the cattle that choose to go there, but it has been stopped since. Know brook; I believe there is a fence down the brook, but I have not been there for a long time; don't know of any fence along the brook except line fence; bank not steep; cattle could go up and down. 500

Cross-examined. Boys took away poles for fencing; cut from salt water into pond. Saw the stage when they were destroying it; part of it was in the water; I think there were six feet on the land; I am not sure; could get on platform without wetting my feet, by walking on the plank they had there.

JOSEPH MCNEILL, Grand Narrows. Know Point; know platform about middle of Point; built with logs, timber on top of logs; part of platform was on the grass—the inner part; it was built of a kind of logs; it was in six or seven feet from the water; it went out into the water about sixteen or seventeen feet; no difficulty in getting on; land was dry about it; there was one corner resting on the grass, and the other corner about high water mark; the west end was on the grass; the upper logs were longer than the lower ones; some of the timber was on the wharf; wharf was built with cross logs; it was all one block on top; there was timber that was not in the block; it was, as I remember, about high water mark; I was one of the parties that went to remove the block; it was moved by our hands and handspikes; we pitched it out in the water; the timber was not injured; there were no axes used; we were about an hour or an hour and a half removing it; remember John McKinnon, Jr., coming. 510

Cross-examined. About thirty logs were in the wharf, I think; twenty or thirty pieces of timber on it; the rest of timber and material was about high water mark. I think he had been working with his son ten or twelve days at it. We removed it about fifteen feet from the shore. Went to the Point before that with Father McKenzie to see plaintiff. The priest said he was not allowed to build there. He had timber on the shore, but had not built any; was dragging up logs on the grass; this was about fifteen days before we destroyed it. 520

Cross-examined. I am brother of one of the defendants. Some of the others began before me, five or six minutes; they began before I got there. I think the platform was eighteen or twenty feet wide; it was pretty near square; it went fifteen or twenty feet into the water; the water is shallow there; would have to walk from high water fifteen or twelve feet to get up to one's knees; would go six or seven feet from high water mark before I got over my boots. I would have done it if all outside of high water mark if asked. Some of logs were below the water. When we took the upper part off we pried up others that were in the mud under the water. I think the tide rises about a foot there. Did not count the wharf logs; can't say how the logs were placed; some of timber was at high water mark away from the platforms; we shoved off some of that into deep water. Will not swear plaintiff was not at work for a month. I think the logs were where the platform was put afterwards; can't say exactly. By the grass, the same as in the pasture, two feet of the sticks came on the grass; sticks were thicker at one end than the other. 530



HECTOR MCKENZIE, a defendant. Know the Point; went to remove the platform, with others, built with a kind of logs; it had cross pieces; there were four logs and cross pieces; three cross pieces, others laid on top of them; four logs on top of them and cross pieces, forming the second tier; it was then covered with a kind of poles; some of it was on the shore five or six feet, as far as I know; the top pieces were coming on the shore; there were two logs running out on top of second tier; the end of these were on the beach from five to six feet; these top logs were covered near the shore with a pole here and there across; the platform only ran out the length of one log at the bottom, and had two logs in the second tier; there was nothing outside of the log that was on the bottom; on the top there was a ship timber. Nothing had been done when I got down; I was among the first. I think not more than thirty or thirty-five wharf logs in the structure; saw no other wharf logs about there; there was timber on the shore and on the platform; about sixteen or seventeen pieces on the platform; we did not place timber on the shore; we found it there. Width of platform about sixteen or seventeen feet, length twenty-five or twenty-six feet. We removed structure out into the water; it did not sink, as far as my knowledge; don't think we were more than an hour; we did not remove all that was on the shore; the logs were second growth red and white spruce. I sold straight timber at four dollars a ton. Could get on the platform with dry feet; I walked right on it; did not wet my boots. The innermost portion of platform was three or four feet inside of high water mark. It was a fine day.

Cross-examined. Never sold ship timber; tide only three or four inches; both sides of platform were touching the shore five or six feet from the water edge; they went five or six feet on the beach; they went as high on both sides as high water mark, above high and low water mark; some of the logs were a little longer than others. There was an old scow there. I won't swear there were not a couple of plank there from the old scow; can't say I went on by those plank. Some of the parties got their feet wet. Don't recollect any handspikes being used. Will not swear there was not more than one length of logs in the bottom. The bottom logs were, to my knowledge, twenty-five or twenty-six feet. I don't think there were thirty men; can't say; there were twenty-two or more. Did not measure block; we were excited; can't say it was not twenty feet wide.

Re-examined. It was not sixty; don't think it was forty, but will not swear.

MICHAEL MCNEILL. A defendant; know Point for twenty years; remember when wood was cut off from it. Father McGillivray was the parish priest then. It was cleared north of chapel, but can't say if it was cleared east of where the road is now. Went with the rest to remove platform; requested to go; platform made of logs and poles. Did not go on it. I think it was two logs in length out from the shore. The inner end was on the land, five or six feet inside of high water mark. They were touching on the grass above the beach, above high water mark. The inner end and lower tier were resting on the land, outside of the water's edge; platform had parallel logs going out into the water; can't say how many. There were about 25 or 30 logs out of the water, and about 40 or 60, or more, in the water. I meant the timber of the logs. I can't say there were more than 30 or 40 pieces. There was a pile of timber which we did not touch,—of ship timber. There was about four logs laid out, and another tier above on the cross pieces; there were poles on top. I call them poles; they were not large. The butts of some were nine inches through and the tops two inches; some five inches in the butt, they were smaller than the logs I have seen in wharf at Christmas Island. We moved some that was on the shore into the water. The water would be four or five feet deep at outer edge, in my opinion,

and about an inch at the shore for lower tier. Poles are worth \$150 per hundred; paid plaintiff for nine poles \$1.50; they were about same size as those I saw on the wharf. I saw him picking timber out of the pond. There was a pile there; can't say logs or timber.

Cross-examined. Tide five or six inches, sometimes less. It was land grass where the sticks rested. Before we went to remove it I went down to see the platform. It did not extend out 40 feet nor 30 feet; it ran out to 12 or 14 feet on dry land; there were one, two or three tiers altogether. [*Ans. to Court:* The platform was about three feet thick at inner end; it was at the outer end one or two feet out of the water. I think there was only two or three tiers altogether; we did not touch the pile east of the platform; can't say that nobody did.]

Re-examined. It is shallow 50 or 60 yards out; would not drown a person there; can't say depth of water at outer end; it is more than one foot; may be two or four.

590

RORY MCNEILL (*Gaelic interpreter sworn.* Not sure how old he is; think twenty-nine or thirty. Went with the rest. A little of the timber was in the water. Saw wharf; the outer part was in the water; part of it was connected by the timber with the land; it was above high tide; am certain there was two or three pieces resting on the grass, but more rested on the beach or sand. There were about two tiers in the inner end of the structure and three tiers in the outer end. The upper log was longest, and came further in. Don't think there was more than one length of log running out over; about four or five pieces (logs) in the upper tier; think there were seventeen or eighteen pieces of ship timber on the wharf. McDougall paid twenty-five to forty cents for wharf logs for public wharf, as good as McKinnon's, and better.

600

Cross-examined. I talked with the other witnesses. Understood before I left home it was necessary to prove part of the timbers in the wharf were on the grass. Some of logs in public wharf were shorter. Did not remove timber that was not on the land. There would be forty or thirty-five that were lying on the land. There were wharf logs on the grass, two or three—part of the platform. Don't remember seeing planks.

Adjourned 5 o'clock.

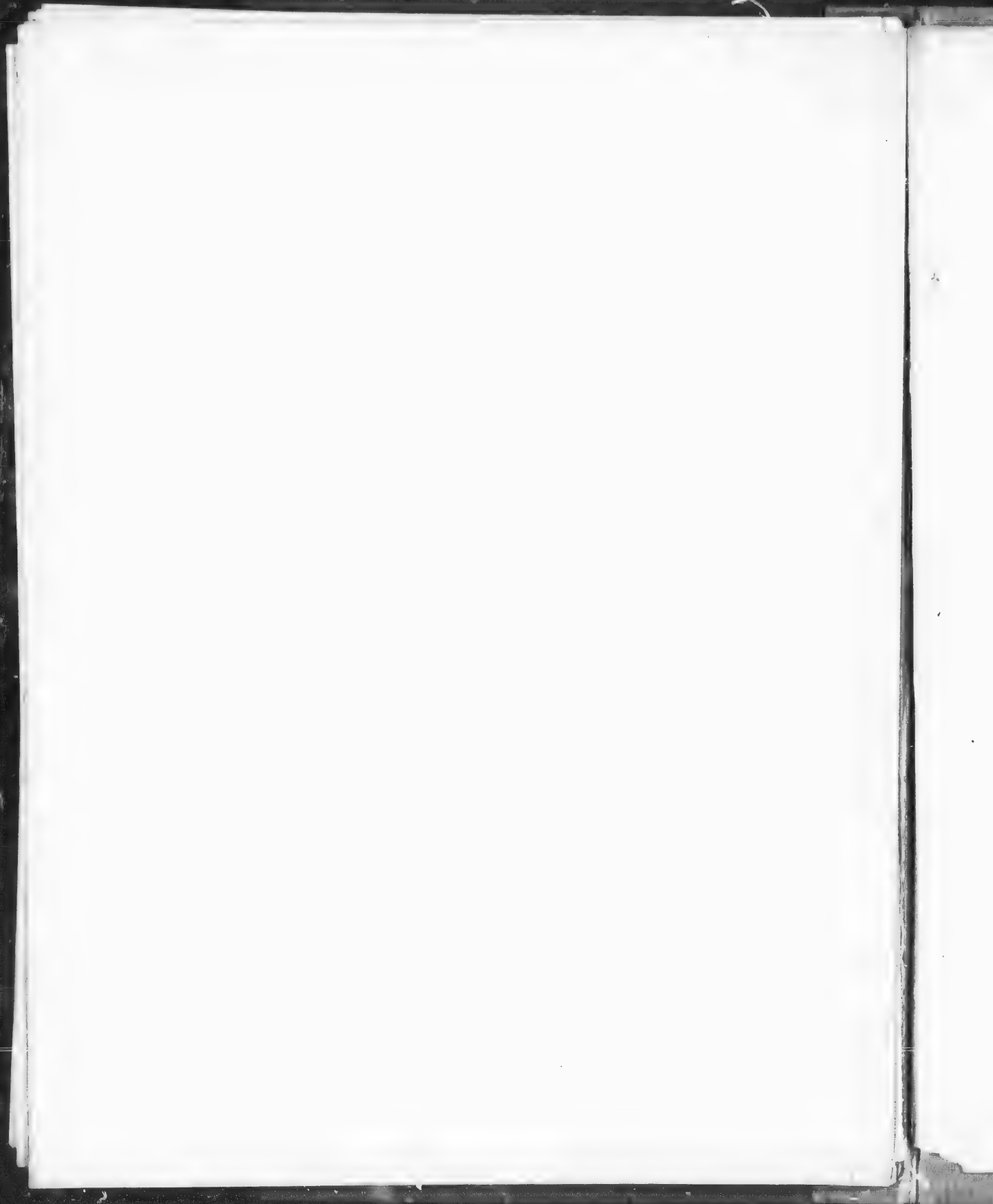
SATURDAY, 28th August, 1880—10 A. M.

HECTOR MCNEIL. One of defendants. Grand Narrows, two miles above Christmas Island. Went to help remove platform. It was about thirty feet long and fifteen or sixteen feet wide. Some of it was on the water and some on the shore. I walked up on it; did not wet my feet going on. There were some timbers on the platform; we put them off. We put the platform out in the water. The logs were smaller than wharf logs. Never saw such a wharf. Saw other timbers on the shore and the grass. I was one that removed it; three or four sticks whatever; moved it into the water further out than the platform. It was about 18 inches deep; walked out to it in the water; it was not above my knees. I think there were two tiers at the outer end, and two of cross pieces; cross pieces on top. The cross pieces were about five inches at one end, and three or four at the other end; not fastened. There were twenty-eight or thirty wharf logs worth twenty-five cents apiece.

610

Cross-examined. Was not talking with the other defendants about length of wharf. We talked about number of logs, but were not very sure, any of us. There are twelve or thirteen of us here. Did not agree about the size, and never heard about grass before. Some of the poles were the size I have mentioned. I don't think any of them were a foot at one end; don't suppose any of them were eighteen inches; will not swear. Did not measure platform. The logs away

620



from the platform were, some of them, on the grass. I rolled some off the grass. Know there was an old scow that had timber in. The platform would bear the weight of a boat; can't say if it was large enough to build a schooner. The wharf logs were, by my estimation, fourteen or fifteen feet long; don't think I saw any thirty feet long; there might be some thirty-five feet long, but I did not see them; I know that the lower tier ran out; I mean the logs in the bottom; I helped to remove all of them, the bottom ones and all. Don't know that there were two tiers in any part running out. There were two cribs; one outside of the other; can't say if they were built together or separate. There were between thirty-five and forty wharf logs of all kinds; twenty-eight or thirty of what I call wharf logs. Not covered with poles; only one here and there to keep up the ship timber; about half a dozen of what I call poles; did not count any of them. Some had handspikes; there were twenty-three or twenty-four of us. It took us about half an hour, perhaps a quarter of an hour. I walked round the platform to put out the logs so as they would float in the water; I mean the ship timber; it was eight, nine and ten inches thick. It was not above my knees at outside. There was wood besides; the most of it was round. I did not go in above my knees. The top of the platform was seventeen or eighteen inches above the water. Only two logs at outer end above one another; can't swear; only two thicknesses at outer end. Have sold better than any of them; besides one or two for twenty-five cents. There were fifty or sixty sticks of ship timber not on the platform,—a few on the platform; did not put them all adrift. 630 640

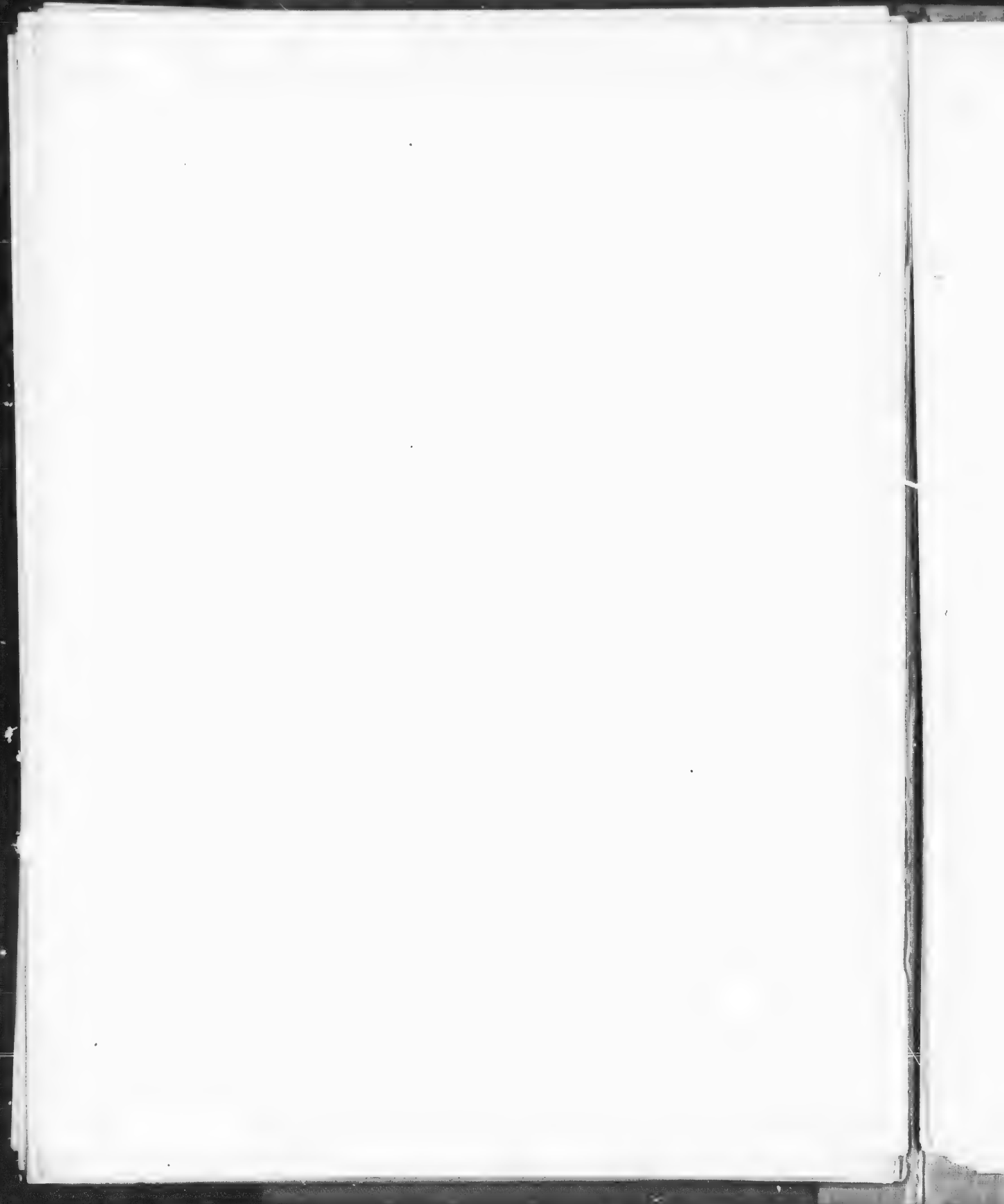
H. F. McDougall, Esq., M. P. P., Cape Breton County, Christmas Island. Know the Point and road to wharf. The whole of the south end of the bridge is east of the line, and nearly all of the north end; all but one or two feet. Bridge was built between fifteen and sixteen years ago. The bridge was built under direction of Father McIsaac. The end of the road next the north end of bridge is partly over the line. It was built six or seven years ago. The gate was put there under direction of the priest; his servant put it there; the priest's boy has always looked after it. There is about two feet of the gate west of the line. Road and wharf built under my direction. The priest gave permission to build the road. About one-third of the Point shows indication of having been cleared some twenty years ago; most of it pretty good pasture. The woods on it are of second growth. No heavy wood on it. Saw platform at a distance; could form no estimate of its size or height. I don't remember buying wharf logs over fifty cents. They would be hemlock, &c., twenty-four feet long and nine inches or ten at small end. Not much danger of timber being lost at that place. Was at meeting of Wardens when plaintiff's application for leave was considered. He was not present. [Evidence tendered as to what the priest said at that meeting, as plaintiff's agent. I refuse, Dodd objecting.] 650

Cross-examined. The Point is not what I call cleared pasture land, no part of it. Probably an easterly wind would drive wharf logs out of the harbor. Plaintiff and I are not good friends. 660

MICHAEL MCNEIL. Live at ———. Beiong to the Narrows; sixteen years since I left there. Was servant to McGillivray, P. P., about twenty-seven years ago; I cut for him over to the Point from the chapel.

Cross-examined. Can't read nor write. Cut north of chapel; left poles there; cut towards the bridge and down to the Point.

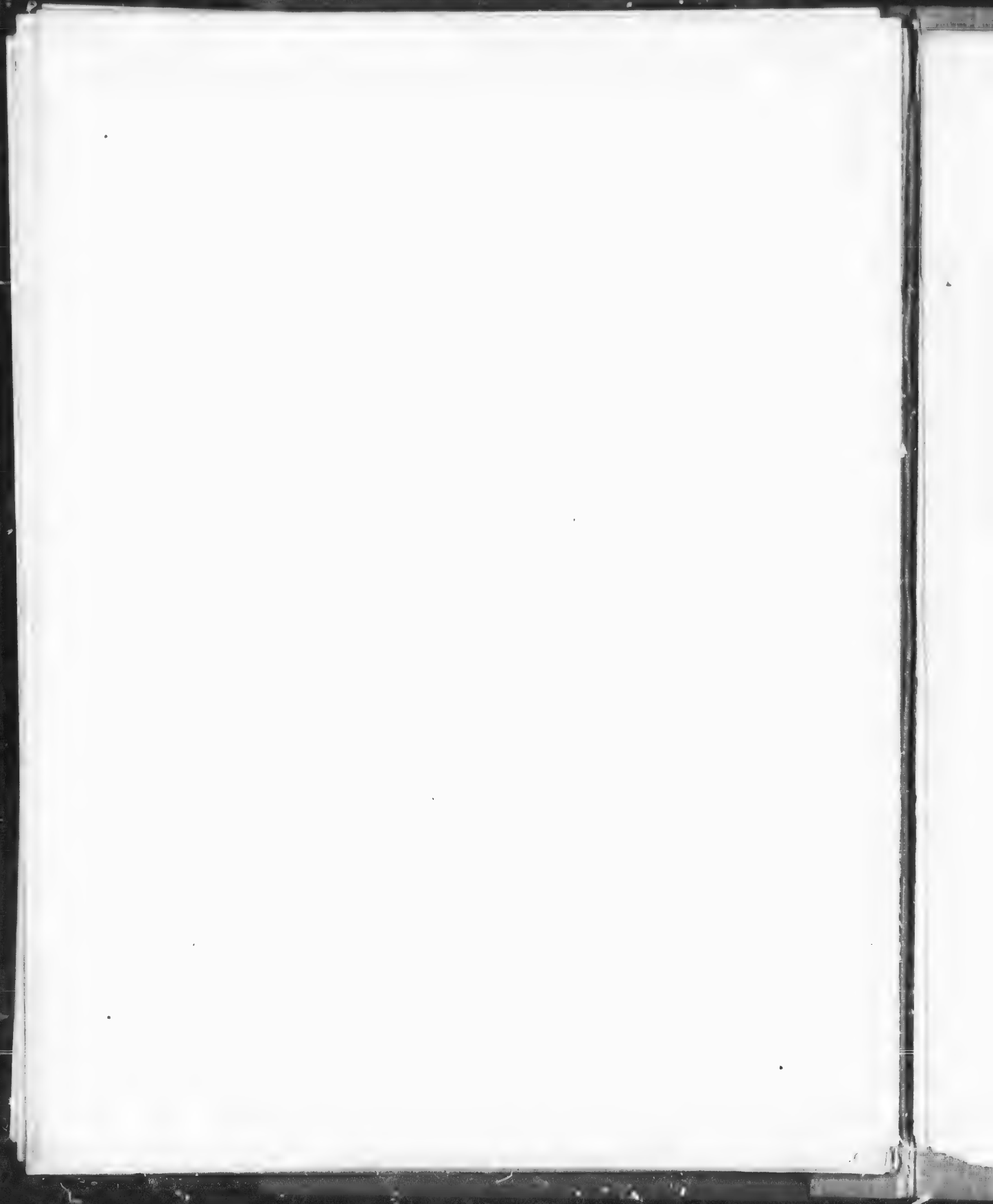
[Defendant rests.]



REBUTTAL.

Plaintiff recalled. On a wharf sixteen feet wide and twenty-five or thirty feet long I could only build a small boat. The timber I had gathered would build a vessel of seventy tons or a vessel of three hundred tons; there were sticks enough for the smaller vessel, and they were large enough for the larger vessel, but not enough of them. At the outer end I considered there was between four and five feet of water. Heard Hector McNeil's testimony as to depth of water and height of platform. There were large logs (many of them) from twenty to twenty-five feet long; a good many of the long ones were over eighteen inches diameter; could not build a vessel of seventy tons on such poles as were described; the first layer at the outer end was five or six cross pieces lying parallel to the shore in the wind; pieces from toward the shore lay on them. There is a little bank above the beach two or three feet high, with grass growing on it; the beach below is about seven feet wide at the lowest water. The first tier of logs leading out did not extend inwards to within about ten or twelve feet of the west face of the wharf; then there were cross pieces; the next tier came out to the western face; there were cross pieces on that again; then another tier on top; this was the last; it came in towards the shore; I put the largest in the bottom and the straightest on top, so as to be level for the covering. The west face of the wharf was about twelve feet from the edge of the water; two planks led to the shore, one larger than the other leading to the beach, not quite to the foot of the bank. The planks were about four inches thick; there were about eight logs parallel lying out from the shore; in some cases there were two lengths and in some three lengths; there was no place in which a single log led all the way out; there were either two or three logs in each case; there were three cross tiers at the outer end and two at the inner end. [Produces and explains plan of wharf marked "A. J."] Had conversation with Father McGillivray about twenty-seven or twenty-eight years ago. He wanted to clear second growth down to the Point; he brought me to show him the line, and he cleared to the line and no further. 670 680 690

Cross-examined. Could only conveniently build a small boat on that platform as described. I built no vessel of 200 tons; the largest I built was 180 tons—a hermaphrodite brig. The long logs were red spruce. We were about a month building it; put stakes to hold down the lower tier; staked also second tier; did not stake them to the bottom; they all floated until the weight came on them. I had a boat. They were notched in the water. Had two slippers on one side to slip the ship timber up. The logs were about two feet apart. There is no clearing between the line and the Point; no indications of any clearing east of the line, except a few small trees lately cut on a little corner next the water. Can see platform from the road near the shore. [Dodd proposes to prove a paper signed by plaintiff, which has come into his possession since the previous examination of plaintiff.] This is my signature and marks on explanation. Father McKenzie sent for me, and threatened to expose me in chapel next Sunday, and I thought it was better for me to sign this, and I would get a place to build, and I then asked for another site, and he said no. Then I said I would not consent to that paper. [Put in and read. Acknowledgment of plaintiff, dated 1st Dec., 1877, marked H A. J.] Commenced about twenty feet from bank in about a foot of water; about twelve or fifteen over thirty feet long; there was one hundred whatever, large and small. It was level two feet above water all round. The flooding of poles would raise it about five inches; the blocks below keel would be two and a half feet high; the stern of vessel would be five feet high; depth of water there four or five feet, but getting deeper; such a vessel would draw six or seven feet at stern, and three or four forward. I in- 700 710



tended to build her stern out. The stern would project a little over the platform. The planks I had were got out of the scow that was floating about; end of plank was on the beach; nothing was lying on the Point.

Re-examined. I have not finished my new vessel, as I have to launch her on the ice.

MCKENZIE, P. P., recalled to explain as to the paper. Read Bishop's letter. Plaintiff said he had no claim, and did not make any claim. Expressed his willingness to sign; he signed it without a word. Made no threat of exposing him.

Cross-examined. I was much annoyed at plaintiff building there; I spoke publicly in a general way; did not mention his name; perhaps the people understood whom I meant; there might have been a reference made to the timber, or getting a place to build, at the time; don't think I threatened him at all in any way, directly or indirectly. He did not repudiate the paper after he had signed it. I think I told him it was of no legal use—I meant not properly drawn. He objected to an expression after signing, and I wrote it over. He made no condition when he signed it. 720

JOHN MCKINNON, JR., recalled. This plan of wharf is a correct sketch. There were three or four feet of water outside. Some of logs thirty to thirty-five; largest eighteen to twenty-two inches at big end; two planks to the shore, one short and one long. Could build a vessel of sixty tons on platform. Length of platform I estimate at from fifty to sixty feet, and fifty feet wide, to the best of my knowledge. It was longer out from the shore than in middle; could see difference in length of sides. I worked ten or twelve days on it; my brother worked longer than I. Could easily see difference in length of sides; ten or twelve feet difference, I think. 730

Plaintiff rests rebuttal at 1.40.

Recess.

Dodd calls attention to Act for Incorporation of Religious Congregations and Societies, R. S. 139, and the Act to Incorporate the Roman Catholic Bishop as corporations sole, which is not in the court house.

Dodd at 2.45, to Jury; cites Phear on Rights of Water, 70; citing Greensdale vs. Halliday, 6 Bing. 379; Davis vs. Williams, 162, B. 546.

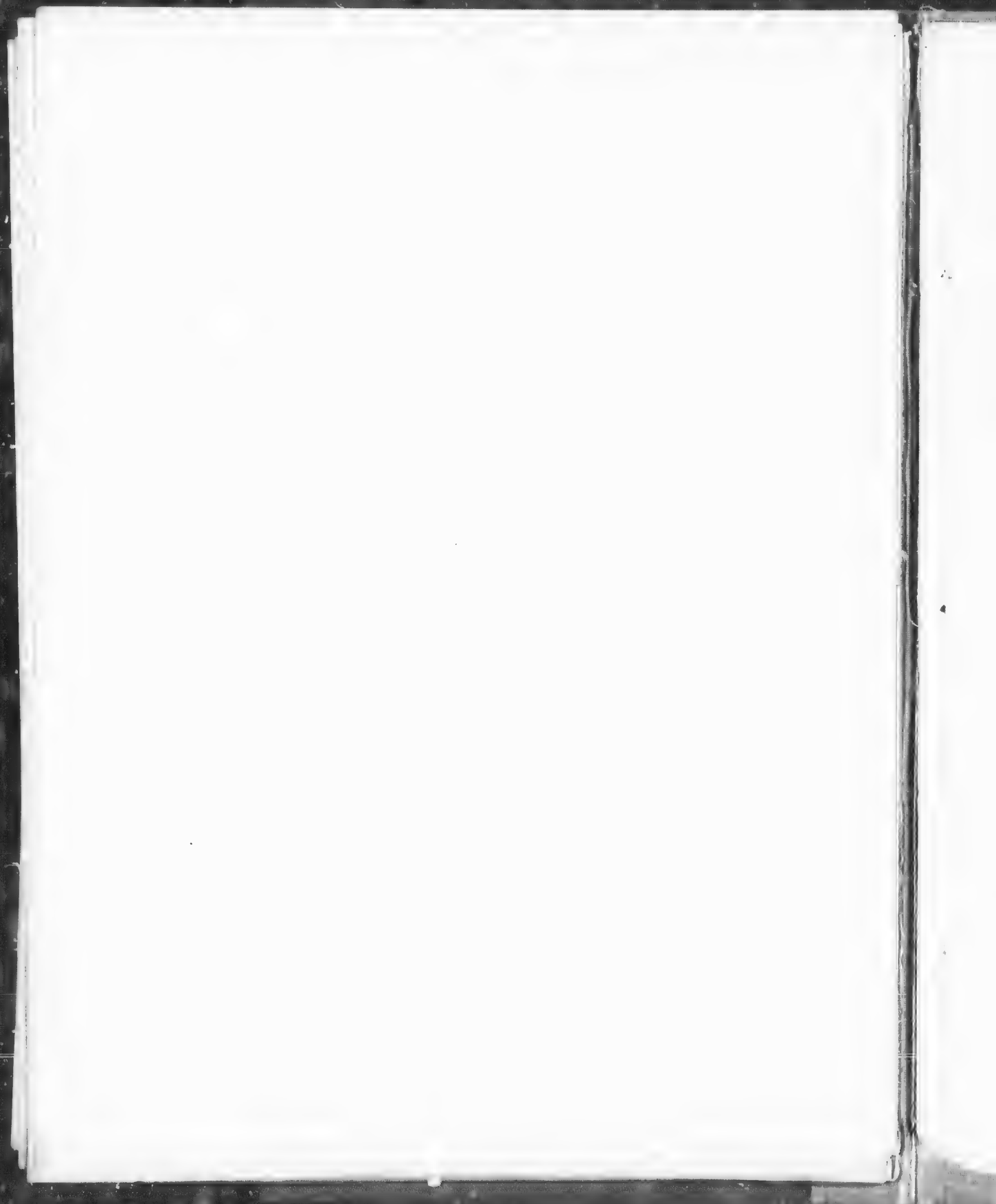
MacKay to Jury at 3.55.

Charge at ———

740

Jury retire at 5.50. At 9.50 I sent for the jury, and they inquire whether they can allow for the plaintiff's labor on the structure, and I informed them that they may do so, as it is a part of plaintiff's loss. They retire, and at 10.10 the jury return and find a verdict for the plaintiff on all the four questions submitted to them, and a general verdict for plaintiff, \$152, the amount being increased as explained by the foreman from the sum named in answer to the fourth question, by the addition of the plaintiff's labor.

Adjourned at 10.30.



CHARGE.

I submitted to the jury the four following questions :—

1. Had the Church authorities exclusive and continual use and possession of this Point for twenty years before action was brought? *Answer.*—Yes.

2. Did the plaintiff's platform rest on the shore at any point above low water mark? *Answer.*—No.

3. Did defendants remove any of the plaintiff's logs or timber that were in or over the water, and not resting on the lands above medium high tides? *Answer.*—Yes.

4. What was the value of the logs and timber so removed?

I told the jury that the plaintiff had made a *prima facie* title to two undivided fifths of the point of land in dispute, that the defendants had set up title by possession to the land, and if they were of that opinion they would express it by their answer to the first question. I told them that if they found the first question for the defendants, as to which I thought not improbable under the evidence, then the defendants had an undoubted right to remove, on the command of the Church authorities, which had been proved, any logs or timber placed on their land by the plaintiff without permission, but no more; but if the plaintiff's erection was not on the land, but wholly in the sea, if a nuisance at all, it was a public nuisance, and could not be abated by any private individuals, unless the erection did a special injury to such individuals, or those under whom they acted, citing *Roscoe N. P. 715*; that I had prepared the second and third questions in order to ascertain distinctly the opinion of the jury as to the actual position of the wharf, which was very material, and I left the amount of damages, if they found for the plaintiff, the credibility of the witnesses, and all of the questions of fact in the case, entirely open to them.

770

CAPE BRETON SS. IN THE SUPREME COURT AT SYDNEY, 1880.

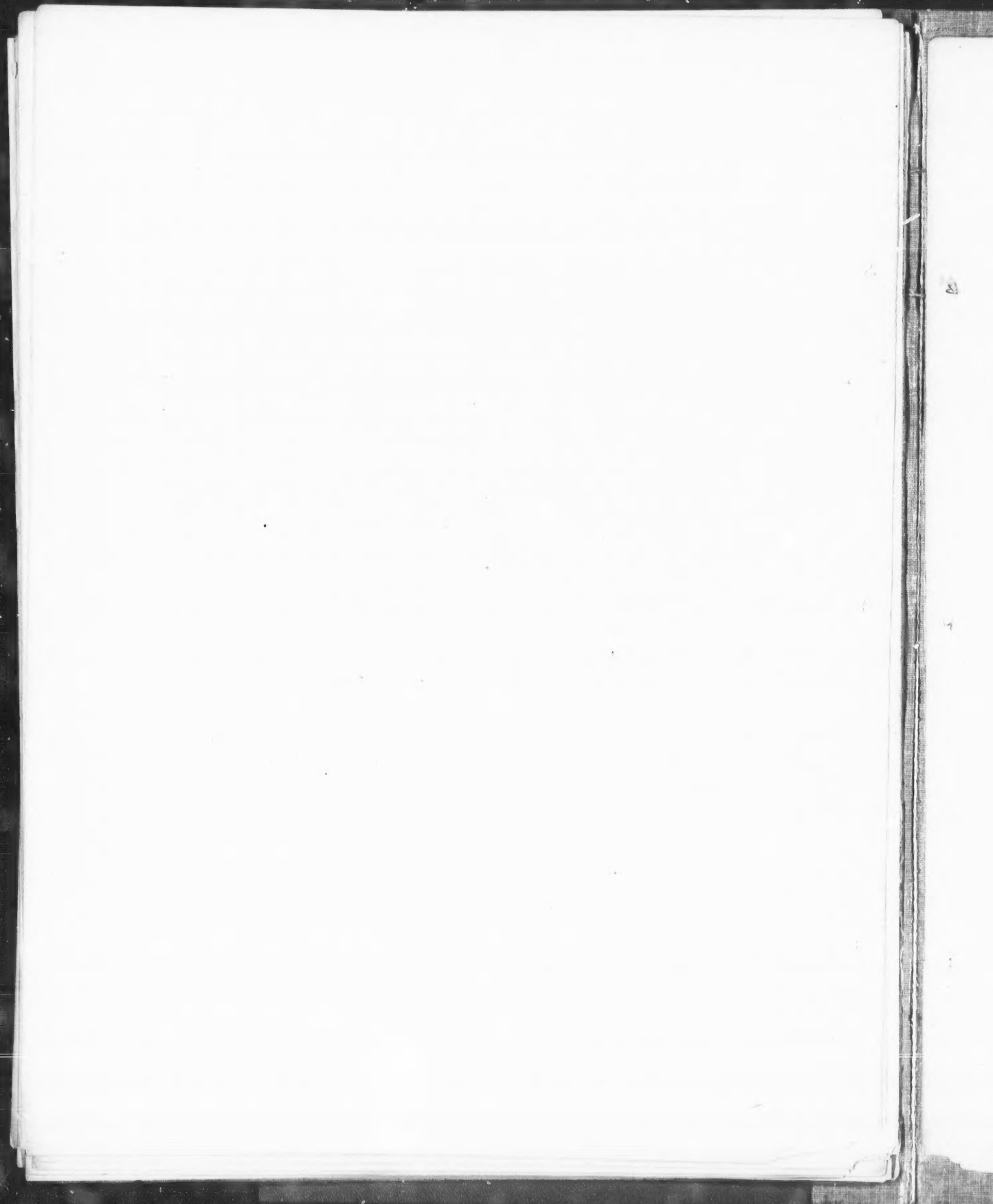
JOHN MCKINNON, *Plaintiff*.

vs.

JOHN MCNEIL, HECTOR MCNEIL, RODERICK MCNEIL, MICHAEL MCNEIL, ALEXANDER MCKINNON,
HUGH MCNEIL, MURDOCH MCKENZIE AND HECTOR MCKENZIE, *Defendants*.

Upon motion it is ordered that the verdict for the plaintiff, obtained in this cause, be set aside and a new trial granted upon the following grounds, namely :—

1. That the said verdict is against law and evidence.
2. That evidence was improperly received at the trial of the cause.



3. That evidence was rejected at said trial which was properly tendered. 780
4. That the learned judge who tried the cause misdirected the jury.
5. That the jury having found the lands in dispute was possessed by the Corporation of the Diocese of Arichat, or the Church of St. Barra, the defendants, as their agents, were justified in committing the trespass complained of.
6. That the alleged trespasses were committed after notice to the plaintiff to refrain from erecting the structure on the lands of the corporation for whom the defendants were acting, and were only such as were sufficient to prevent the erection of the said structure on the lands of the said Roman Catholic Corporation of the Diocese of Arichat.
7. That the plaintiff erected a nuisance on the borders of the lands of the Church of St. Barra, or of the Corporation of the Diocese of Arichat, and the defendants, at the instance of the owners and occupiers of the same, removed said nuisance, as they lawfully might, which was the alleged trespasses. 790
8. Such other grounds as may be raised by counsel at the argument.

Unless cause to the contrary be shown before the Supreme Court, in banco, within the first four days of the next ensuing term at Halifax.

Dated at Sydney this 1st day of September, A. D. 1880.

By the Court,

(Sg'd) C. E. LEONARD, *Prothonotary*.

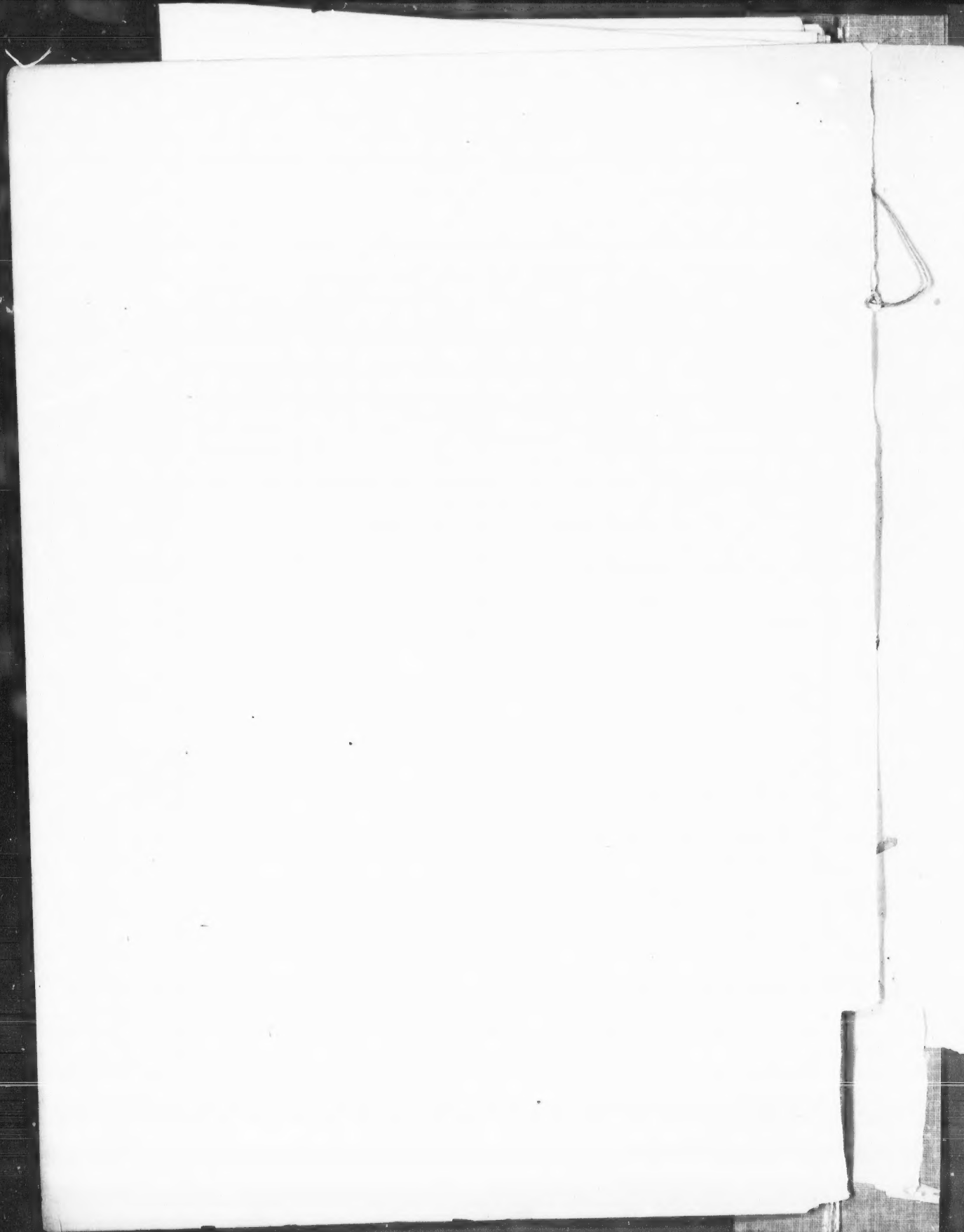
PLAINTIFF'S EXHIBITS.

"B." A. J.—GRANT FROM THE CROWN.

800

*To Hector McDougall, Archibald McDougall, Roderick McDougall, John McKinnon and Donald McNeil,
dated November 4th 1833.*

"To the said Hector McDougall, Lot No. 15, opposite Christmas Island, south side Little Bras d'Or; bounded by a line beginning at the north-east corner boundary of Lot No. 14; thence running, by the magnet in the year 1808, south ten degrees east, 109 chains, more or less, across a small inlet to a general rear line; thence north seventy degrees east, in the year aforesaid, twenty chains and nine links, more or less, till the ancient boundary between Lot No. 15 and No. 16 be in a direction north ten degrees west; thence north ten degrees west, in the year aforesaid, one hundred and eleven chains, more or less, across a small inlet to the shore; thence along the shore westerly and across the two inlets to the place of commencement, containing two hundred acres, more or less, agreeably to the annexed plan." 810



"C." A. J.—DEED DATED AUGUST 15, 1877.

From "Alexander McDougald and his wife Mary McDougald, and his sister Mary McDougald, of the North Bar, in the County of Cape Breton and Province of Nova Scotia, and John . . . of Christmas Island in the County and Province aforesaid, and Sarah McDougald and . . . of Christmas Island, being the heirs of the late Hector McDougall, deceased, of Christmas Island, in the County and Province aforesaid." To "John McKinnon, of Christmas Island, in the County and Province aforesaid."

Conveys "a certain piece or parcel of land, lying and being at Christmas Island Harbor aforesaid, known as part of a lot of land grant to the late Hector McDougall aforesaid, and 820 bounded southward by the glebe land, and bounded west, north and east by the waters of Christmas Island Harbor, containing by estimation one acre, more or less, together with the improvements," &c.

DEFENDANTS' EXHIBITS.

"F." A. J.—GRANT FROM THE CROWN.

To the Roman Catholic Episcopal Corporation of the Diocese of Arichat, dated July 30, 1878.

Grants "a lot of land containing twenty-eight acres, in the County of Cape Breton, and bounded as follows: Beginning on the northern side of the Post Road and on the western line of Lot No. 14, in the first range of lots on the southern side of the Grand Narrows, and directly opposite Christmas Island; thence north-easterly by the northern side the said road, fifteen 830 chains and eighty-eight links; thence north six degrees west, four chains, to a brook; thence north-easterly by said brook and a cove, five chains and eighty links, to the eastern line of said Lot No. 14; thence north six degrees west, five chains, to the shore; thence westerly by the shore at high water mark to the western line of said Lot No. 14; thence south six degrees east, sixteen chains and forty links to the place of beginning. * * * which lot is particularly marked and described in the annexed plan."

"H." A. J.

I, the undersigned John McKinnon, of Christmas Island, do hereby abandon all claim for ever to a piece of land which the Church claims, and of which I received from some of the heirs of the late Hector McDougall their pretended right to it. I will, as soon as possible, transfer 840 back whatever title I got upon it; and further express my regret for having given my Parish Priest and Bishop so much trouble about it. I also promise never to give my assistance directly or indirectly to deprive the Church of the lot of land in question.

(Sg'd) JOHN McKINNON.

In presence of M. McKENZIE, P. P.

CHRISTMAS ISLAND, 1st December, 1877.